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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHILDREN'S LAW REFORM AMENDMENT ACT

THURSDAY, APRIL 1, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Andrewes, P. W. (Lincoln PC) for Mr. Treleaven
Kolyn, A. (Lakeshore PC) for Mr. MacQuarrie
Laughren, F. (Nickel Belt NDP) for Mr. Swart
Williams, J. R. (Oriole PC) for Mr. Mitchell

Clerk pro tem: Forsyth, S.

Staff: Tucker, A. S., Legislative Counsel

From the Ministry of the Attorney General:

Beecroft, D. A., Counsel, Policy Development Division
Shipley, A. Q., Counsel, Policy Development Division
Taylor, Hon. G. W., Acting Attorney General



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, April 1, 1982

The committee met at 4:20 p.m. in room 151.

ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

Clerk of the Committee: Honourable members, I will call the meeting to order.

Mr. Andrewes moves that Mr. Treleaven take the chair at this committee. Are there any other nominations? Will the motion carry?

Motion agreed to.

Mr. Chairman: Thank you, Mr. Andrewes and gentlemen. I think it is in order to proceed to the election of a vice-chairman. Are there any nominations for vice-chairman?

Mr. Eves moves that Mr. MacQuarrie be vice-chairman of this committee. Are there any other nominations?

Mr. Renwick: Just one question. Will Mr. MacQuarrie be available because he is a parliamentary assistant, is he not?

Interjection: Yes, to the Solicitor General.

Mr. Chairman: Mind you, Mr. Renwick, he was also a PA the last time, as was Mr. Williams. Does that make a difference?

Mr. Renwick: No. I just wanted Mr. MacQuarrie to tell us he would be available and not leave us without a chairperson.

Mr. Kolyn: He would be here but he had a prior meeting he could not get out of.

Mr. Renwick: That is what I meant. We have a chairman who has to leave shortly and we are going to have a vice-chairman who will not be here.

Mr. Chairman: No, he will not be here. There would have to be an acting chairman.

Mr. Renwick: So we will have an ad hoc vice-chairman and so on. That seems to me to be kind of a lousy way to start off a session of the standing committee.

Mr. Chairman: Would you like to defer the election?

Mr. Renwick: No.

Mr. Breithaupt: It does not matter.

Mr. Chairman: Are there any other nominations for vice-chairman? No.

All those in favour of Mr. MacQuarrie as vice-chairman please raise your hands. All those opposed?

Motion agreed to.

GENERAL BUSINESS

Mr. Chairman: Would someone wish to make a motion that the proceedings of the committee be transcribed unless the committee, by order, decides otherwise? This would carry on, I understand, throughout the entire session.

Mr. Breithaupt moves that the proceedings of this committee be transcribed throughout the entire session unless the committee, by order, decides otherwise.

Motion agreed to.

Mr. Chairman: If I may start out this session, you will recall the kerfuffle we had regarding abstentions back in January. There was a question as to whether a member could abstain. The standing orders said that there was no provision for abstention and yet the chair cannot enforce voting.

I caused the clerk to research it and I am not sure who he caused to research it, but the bottom line is that it is suggested if someone wishes to abstain he should absent himself from the room. Otherwise, the only authority of the chair is to demand that the member not abstain, demand that he vote, and if he refuses, he must be reported to the House. The net result of which, in January for example, means that question cannot be put until at least April. So it somehow subverts the entire matter. The practical answer, if you wish to abstain, is please absent yourself from the room and then come back. There is a memo to this effect as to the wisdom of that conclusion.

May I put on the record that Mr. Williams is back as a substitute. He is returning home as a substitute, not as a regular member of the committee.

May I also mention that I must leave within a matter of a few minutes for an annual meeting, and it is on consent. Can I get on the record that it is on unanimous consent that I do leave the chair at this point and that I am substituted for by Mr. Andrewes hereafter for the afternoon to assist the inauguration of our setup?

Mr. Laughren: Why does it have to be unanimous?

Mr. Chairman: Because I think we made the rule that if you are going to be substituted for, you are substituted for for the entire session up to the halfway point of the session. Correct, Mr. Renwick? Say yes.

Mr. Renwick: That would depend entirely on the clerk.

Mr. Laughren: And on your colleagues.

Mr. Spensieri: I can see we are about to undertake a very quick proceeding.

CHILDREN'S LAW REFORM AMENDMENT ACT

Resuming the adjourned consideration of Bill 125, An Act to amend the Children's Law Reform Act.

Mr. Chairman: Thank you. When we left in the second week of January with Bill 125, when the entire section 20 was negatived, after carrying the previous seven subsections, the technical wording of the section was that the vote would be set aside. There was also some previous wording by Mr. Mitchell that section 20 be reopened.

The chair will interpret that motion as opening section 20 back to the beginning of section 20 unless the chair is challenged, in which case we will have a vote. We did not just open up the vote. In other words, we are not at the end of section 20 with only the vote to take over, we are at the beginning of section 20.

Mr. Breithaupt: But I asked, Mr. Chairman, since I was enjoying holidays in Strathroy that week, whether the other sections beyond section 20 had been carried.

Mr. Chairman: No. Sections 18, 19 and then the sections to do with the surrogate court portion were completed. No, excuse me.

Mr. Breithaupt: We would appreciate knowing just what sections were carried so that we can move on in a fairly orderly fashion.

Clerk of the Committee: Sections 18 and 19; section 20 was agreed to be reopened.

Mr. Breithaupt: What happened to the first 17?

Mr. Chairman: Then we carried--

Clerk of the Committee: Sections 48, 49, and 50 to 62.

Mr. Chairman: Correct.

Mr. Breithaupt: Could I have a list of those, please, and perhaps even a copy of the bill?

Mr. Chairman: Sections 48 to 62 inclusive are on guardianship. The reason we took them in that order was that the CBA, the surrogate court people, were here--

Mr. Breithaupt: For their particular area of interest.

Mr. Chairman: Yes. So we took that out of order. Then we started back at section 18, passed it and 19, and then had our troubles with 20.

Mr. Breithaupt: I see now that it starts at section 18 with respect to the changes we are making.

Mr. Chairman: Correct. It is a new part III added on to the Children's Law Reform Act.

Mr. Breithaupt: Correct. Sections 18 and 19 have been carried.

Mr. Chairman: So we are now at the commencement of section 20.

I believe also I could report that the Acting Attorney General (Mr. G. W. Taylor), or someone on the government side, will be introducing certain amendments which, I believe, the clerk will be distributing. If you do not have all the sets of amendments which were introduced by Messrs. Elston, Spensieri and Renwick earlier--you probably have them but if you don't the clerk has copies.

I must leave shortly. Before we start, may I have a motion for someone to take the chair for the rest of the afternoon, to be acting chairman?

Mr. Breithaupt: If you would give us the name, I would be pleased to make the motion, Mr. Chairman.

Mr. Chairman: This is a democracy, Mr. Breithaupt.

Mr. Williams: I would nominate Mr. Andrewes to accommodate you by taking the chair, but he is not here at the moment.

4:30 p.m.

Interjections.

Mr. Chairman: Mr. Williams moves that Mr. Eves take the chair.

Motion agreed to.

Mr. Elston: Is there something wrong with this committee? You are leaving, Mr. MacQuarrie won't show up and now Mr. Andrewes isn't here.

Mr. Chairman: And Mr. Mitchell won't show up. It is organization day, Mr. Elston.

On section 20:

Mr. Chairman: On section 20(2) Mr. Spensieri had an amendment. Do you have any input into that?

Interjections.

Mr. Chairman: Mr. McLean has an amendment to section 20(2).

Mr. McLean moves that section 20(2) of the act as set out in section 1 of the bill be deleted and the following substituted therefor: "A person entitled to custody of a child has the rights

and responsibilities of a parent in respect to the person of the child and must exercise those rights and responsibilities in the best interests of the child."

Mr. Chairman: Thank you. Are there any comments on Mr. McLean's amendment?

Mr. Breithaupt: I suppose I could comment on the earlier amendment that my colleague Mr. Spensieri made on January 15. It appears that much along the general lines of the amendment he had proposed was accepted by the ministry as this amendment put before us. This is clearly a change that is probably in the best interests of a more general view of the legislation and therefore more clearly available to the best interests of the child.

Mr. Chairman: If there are no further comments, shall section 20(2) carry?

Mr. Williams: Section 20(2) with whose amendment?

Mr. Chairman: Mr. McLean's amendment.

Motion agreed to.

I will turn the chair over to Mr. Eves at this point. Mr. Renwick had a previous amendment to section 20(5).

Mr. Renwick: Perhaps my colleagues could refresh my memory. I have a note that I moved that 20(5) be amended to read as follows, and then I have my own note, "withdrawn in the light of the parliamentary assistant's"--now the minister's--"remarks at 11:50 on Friday, January 15, 1982."

Mr. Breithaupt: Perhaps, Mr. Chairman, we could have the proposed government amendment put and that would give us the forum for discussion.

The Acting Chairman (Mr. Eves): Mr. McLean moves that section 20(5) of the act as set out in section 1 of the bill be deleted and the following substituted therefor: "The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child."

Mr. Breithaupt: It seems that the revision has been the one of visitation back and forth because the other points with respect to inquiries and information are included in the printed subsection that is being replaced. Certainly the matter of visiting, for anyone who has been involved in any aspect of family law, is often a difficult and thorny area where children are occasionally held hostage through the refusal of visiting rights because of the nonpayment of financial obligations. I think if we can break up that pattern it would be much for the better interests of the child. Therefore, the amendment, as I see it, is a good idea.

Mr. Renwick: There were two concerns I had at the time this was withdrawn. One was the problem I and others had run across where either a doctor or a teacher or a priest or some other person

refused information to the noncustodial parent because the custodial parent had said, "I do not want any information to be given to so-and-so about my child." This is designed to cover that point so that, presumably, the noncustodial parent could go to the school and inquire about the educational progress of the child and not be faced with the custodial parent having told the principal of the school that no information was to be given to the spouse. Is that my understanding of what you are proposing to do?

Hon. G. W. Taylor: Yes, Mr. Renwick.

Mr. Renwick: I think that is adequate from my point of view. The other point I tried to cover in the motion I had put was the additional one that the noncustodial parent, while the child is in that person's care, is responsible for the welfare of the child. I do not think there is anything which clearly spells out that the noncustodial parent, having exercised his right to access and having the child in his care, is specifically responsible during that interval for the welfare of the child. That was the second aspect of the amendment I had put and then withdrawn.

I do not know whether the minister or his advisers wish to comment on that or not.

Mr. Shipley: I suppose we would feel that the responsibilities of the parent who is exercising access are fairly well understood. We would also be concerned in particular about imposing a responsibility on the person entitled to access by legislating that responsibility, because again that could lead to much more litigation and conflict between the parent with custody and the parent with access. It is something that is assumed without its being necessary to spell it out and then provide another ground for the two parents to fight.

4:40 p.m.

Mr. Renwick: Mr. Chairman, I have not got it written out, but I hope the clerk will be good enough to take it down. I am content with subsection 5 as it presently stands, but I would like to move an amendment to it to cover the second point, if that is in order.

Mr. Elston: Do you mean the amended subsection 5 or the way it is already printed?

Mr. Renwick: The one that has just been given to me.

Mr. Elston: With the amendment to it.

Mr. Renwick: Yes.

Mr. Renwick: The one that my friend from Simcoe East has moved. I would like to move an amendment to that.

The Acting Chairman: Mr. Renwick moves that section 20(5), as amended by Mr. McLean, be further amended to add at the end the words, "and the responsibility for the welfare of the child while in the charge of the person entitled to access."

Mr. Williams: That certainly makes the section more cumbersome, and I am not sure I fully appreciate the reason behind it. I would like to hear from the mover, if I could, just what the rationale is for this amendment so I can better appreciate whether it really enhances the original amendment or not.

Mr. Renwick: Just let me make the point that when the noncustodial parent exercises the right to access and has the child in his or her care pursuant to the right to access for the Sunday afternoon or the weekend, it is clear that that noncustodial parent has during the time that the child is in his care the responsibility for the welfare of the child.

Mr. Williams: Is that not covered in any other area?

Mr. Renwick: I did not think it was, but I am not an expert on that.

Mr. Williams: I am at a disadvantage. I am just asking as one who has not been involved in the clause by clause on this bill previously. I do not know whether there is any other area of the bill that deals with that.

Mr. McLean: Mr. Chairman, I would like to hear from the staff as to whether it is covered in another place in the act or if it is not.

Hon. G. W. Taylor: I think what you have to understand is that that is really part and parcel of access, but you also have the responsibilities for that child while you are entitled to access or are exercising any features of access to the child. That is why it will not be spelled out in the bill specifically. I will have Mr. Shipley comment on it. I would agree that the law so speaks, and it is understood that if you are exercising your access, you do have the responsibility of that as one of the terms of access.

Mr. Shipley: If we are talking about responsibility for the basic welfare of the child, his wellbeing and protection from harm, the Child Welfare Act requires any person who has charge of a child to provide a minimum level of protection. I think that would enforce the duty of the parent who has access to provide a minimum level of care for that child.

If we are talking about something else, saying the responsibility for welfare means that the parent who has access has the complete right to make decisions with respect to the child while he has access, I think we are creating a new set of rights in the access parent. If the parent while exercising access could also then consent to medical treatment and could decide, if he has access for the summer, what summer camp he was going to or which kind of training he was going to undertake, then we would be creating almost joint custody during that access period, and I do not think that is what is intended by access.

Mr. McLean: Mr. Chairman, the first amendment I made might cover that aspect that he had mentioned with regard to responsibility and the right of the person that has the access. I think it is covered there.

Hon. G. W. Taylor: Would you care to comment on that any further, Mr. Renwick?

Mr. Renwick: No, I do not think so. I think I said all I can say on the point.

Hon. G. W. Taylor: To assist Mr. McLean, the first amendment he made is in regard to custody. The one we are dealing with now is in regard to access. The two, for the benefit of nonlawyers, are separate features in law.

Mr. Williams: I have a comment. It appears, in looking at the bill, that the express purpose of that subclause originally was to ensure that the person who had entitlement to access also had the right to certain information that would be complementary and consistent with that right of access. It appears that with the amendment that has been given to us that specific provision is also being expanded to ensure that it includes the right to visitation either way.

The introduction of the further amendment adds another dimension to the specific purpose and provision of that subclause to provide not only a right to information and a right to visitation, but now a statutory definition that there shall be responsibility while there is that access. That is why I asked at the outset whether the bill in other areas did not cover that.

It has been stated by staff that the clear intent is that whenever access or custody is given, the responsibility of the welfare of the child is uppermost. To bring in this broad provision here does not appear to me to be the appropriate place to do it when it was set out as a specific subsection to deal with a specific matter, that of providing information, rather than with the amendment providing visitation. Getting into the broader area is inconsistent with what the specific purpose of this section is. I would like to hear from the minister or staff whether that understanding it valid or otherwise.

Mr. Shipley: If I understand the comments, the intention of subsection 5 is to deal with the specific problem, and that is what it does. The other aspects are covered elsewhere, either in this act or in other legislation.

4:50 p.m.

Mr. Williams: From what Mr. Renwick is saying, I just do not think this is the place it should be introduced into the bill. If it is not covered elsewhere in the bill, I think it surely should be spelled out somewhere, but I am not sure this is the spot.

Mr. Elston: I have two or three comments. First of all, I go along with the intent of the amendment. I think the idea of spelling out these things in a greater degree of certainty and putting them right in the legislation will probably let people see in one place all of the legislation they have to deal with, rather than having to skitter from one act to another.

I guess there will not be very many who will remember our previous deliberations; there are nine out of 12 here now, but only four of us dealt with this in the previous session before the committee. Only four of us had the benefit of listening to the people who attended on this committee to give their expert testimony about what they thought this act should do.

So I will let you know that one of our concerns in our first dealings with this bill was that there be a printing in this legislation, right in one spot if possible, of all of the criteria so that lawyers or quasi-lawyers, or even just people who are interested, could sit down and look at the legislation they would have to deal with when they were talking about children.

We had some discussions with Mr. Shipley and with others about whether or not some of the previous amendments we talked about were redundant in that they showed up in another piece of legislation, but I think that if at all possible we should try to do that and put it in this piece of legislation to make it clear.

Secondly, had we been able to take a peek at these amendments a little earlier, perhaps there could have been a refinement to the way in which Mr. Renwick drafted his amendment to the amendment. I will say that it does clutter things the way it is worded, but I think that is because it was drafted on the spur of the moment. Some of these amendments might have been made available earlier since we were originally scheduled to sit on March 2 or 3. I think we would have had a better idea of what method the Attorney General was choosing to address some of the problems that were raised by the experts.

I make that comment because it is rather difficult trying to get yourself primed up to get back into a piece of legislation that you have had to drop as of the second week of January only to find that you have five, six or seven pieces of paper dropped in the middle of your table while you trying to gain the sense of the first amendments proposed. In any event, I will be supporting the amendment to the amendment basically because I am still carrying on with the thrust of our earlier comments, which are spelled out in the earlier copies of Hansard.

Hon. G. W. Taylor: Mr. Chairman, I believe what Mr. Elston is talking about is primarily procedural, as to when amendments can be made and the manner of making of amendments.

Mr. Elston: No, I am just commenting. I am not saying that there is anything wrong in introducing them. There is no problem with that. It is just that if they were available earlier it is too bad we couldn't have looked at them.

Hon. G. W. Taylor: I think Mr. Elston, as new as he is here, has arrived upon a very interesting result of all of our deliberations in regard to amendments at committee stage, that there is very often little in-depth approach to them before being their put on the table. It is one that the procedural affairs committee has been dealing with for some number of sessions.

Mr. Elston: I admire your comments, but in relation to this particular special set of circumstances which surrounded section 20 and its whole history in front of this committee--that last three-hour stint we spent here on Friday, January whatever it was, when it was amended and thrown out, I think these amendments are probably brought in as a result of that and it probably would have speeded things up had we seen them earlier.

Hon. G. W. Taylor: I recognize your comments.

The Acting Chairman: Is there any further comment?

Mr. Williams: Mr. Chairman, one has to take into consideration the views being expressed by those members who were here before those of us who are substituting. They have a better appreciation of the thrust of the bill.

I think, Mr. Elston, we conceded that the first provision makes the specific amendment rather cumbersome. It takes me back to my original point that if there is a need to be explicit with regard to this provision, perhaps it should be set out separately as an additional subsection rather than trying to incorporate it into this particular item. I raise that point as a way of tidying it up. The minister may have thought there was the need to be specific, along the lines of Mr. Renwick's amendment, but perhaps it would add greater clarity to have that as a separate subsection.

Mr. Renwick: May I address that point, Mr. Chairman? The reason I put that in, Mr. Williams, is that section 20(2), which I believe we have just passed, says that a person entitled to custody of a child has the rights and responsibilities of a parent in respect of the child and must exercise those rights and responsibilities in the best interests in the child. That subsection uses the two correlative terms--rights on the one hand and responsibilities on the other--in the same clause.

When we come to this proposal by the member for Simcoe East (Mr. McLean) for subsection 5, all you are talking about is that the entitlement to access, which is the same thing as the right to access, includes the right to visit and the same right as a parent. Thus it does not have any reference to the correlative responsibility of the noncustodial parent while the child is in the care of that person.

I thought it was appropriate, because of the wording of subsection 2, to include the term "responsibility" in the same clause. I do not purport to be drafting as a science. All I wanted to get across was that if you are talking about the right of the noncustodial parent, you should point out to that noncustodial parent that he bloody well has the responsibility to look after the child while that child is in his care pursuant to his right of access. That is all I was trying to say. If there is a more felicitous way of saying it or a simpler way of saying it, that is fine.

I just want the parent to know when it comes to the Sunday afternoon to get the child, while the child is with him boating on the lake, he is back for that short period of time to his responsibility to look after that child. Because of that, I think he

is there with a specific legal right of access and he had better know that he has to take care of that child because the custodial parent, to the extent that the right of access is there, is in a sense excluded from a portion of his responsibilities towards that child. If they cannot exercise the right when the child is out in the fishing boat, in a sense they are cut down. The custodial parent should be entitled to know that when the child is with the noncustodial parent, that parent is responsible for looking after the child.

Somebody can tell me that is natural. If that was natural we would not have to have the law at all because you could say that about section 20(2)--if a person is a parent, why do we have to spell out what the duties and responsibilities of a parent are? It seemed to me to be a simple, sensible provision. Certainly a custodial parent cannot exercise care of the child while the child is in the care of the noncustodial parent by virtue of the right of access. It just seemed to me to be a simple, complementary part, but I cannot explain it any further.

5 p.m.

I just want to answer the question of why I added the word "responsibility" in the same clause. The only reason I did it was that it is already in subsection 2 of section 20.

The Acting Chairman: Does the ministry staff have any further comment with respect to this matter?

Hon. G. W. Taylor: I was going to conclude with the observations of Mr. Renwick and Mr. Williams that that makes that particular clause 5 of section 20 cumbersome and it is not the spot for it.

Having said that, Mr. Shipley might make some comments as to the complications of having such a clause in the bill at all, bearing out the responsibilities of parent having access. He is indicating to me that there are some complications. Mr. Shipley will express those at this time and assist some of the individuals in the argument put forward.

Mr. Williams: If I could just go back to Mr. Renwick's observations, which I think are valid, what is troubling me with regard to the cumbersomeness of the amendment to the amendment is that under the original we are talking about access being defined to include access to information. Mr. Renwick's amendment, of course, would make no sense if the right to visit with and be visited by the child had not been incorporated in the original amendment. It is his amendment that relates to the introduction of that clause which gives relevancy to his particular amendment.

It may be, again, that it would be more appropriate if there seemed to be a need to ensure that when there was physical access that it be spelled out in the legislation that the responsibility for the welfare of the child be on the person entitled to access, be incorporated with that provision about the right, that access include the right to visit with and be visited by the child and the definition of entitlement to access to include right to information be kept separate and apart. Those are the only two points I make.

The Acting Chairman: Mr. Shipley, do you want to comment any further?

Mr. Shipley: I think I would probably just be repeating what I said earlier. If we impose upon the person who has visiting rights responsibility for the care of the child while he is visiting the child, we would be taking away from the rights of the parent with custody and we would also be imposing new responsibilities that he may not have.

A question arises, would he then be then responsible for financial support while he has care of the child? This is quite a different issue and is dealt with in different legislation. If, while he is exercising his visiting rights, he does something that the parent with custody does not like, then the parent with custody will come to court and say, "You are not exercising your responsibility for the care of the child while you have those visiting rights," and is going to create further litigation and further dispute about the right of the person with access in exercise of those visiting rights.

If the custodial parent is concerned, then the proper route is to seek a variation of the access order or, as I said, there is a lot of other legislation which enforces the duty of anyone who has a child in his care to exercise the minimum rights for the safety and general wellbeing of the child.

Mr. Elston: Though there is logic in all of that, I think I heard you say that if we said the person who has access to the child is told by this amendment that he also has responsibility for the welfare of the child, then in some way we are taking away rights of the custodial parent. Are you telling us then, at this stage, that as a custodial parent I would maintain the responsibility and that my spouse, or whoever has access, has no responsibility under the current situation? Is that what you mean to say?

Mr. Shipley: We are having problems talking about responsibility. I was including that authority as well. Responsibility would include responsibility for medical treatment, for example.

There is a disagreement. One parent believes in blood transfusions and the access parent does not. One could get into that kind of problem. The parent who then has access would say, "Fine. I consent to a blood transfusion. I am exercising my responsibility for the care of the child," and the parent who has custody, who in law would have sole authority to make that decision, would be cut off from making that decision.

Mr. Elston: If I remember the thrust of the presentations of the Canadian Bar Association family law group and what they saw this legislation as--and I could be mistaken on this, I am not sure--isn't the thrust really to make sure that both parents are still very much involved with the child?

The recognition is that the custodial parent and the access parent vis-a-vis that child are to be maintained as closely as

possible in a parental relationship with him. We are making it clear that they are to get the same information, or at least have access to the same information as the other parent. It seems to me that if we are trying to make that thrust through this legislation--mind you, that is not the sole reason for the legislation--we ought to imply a responsibility as soon as the access parent takes that child from the home of the custodial parent.

The custodial parent really has no way of following up on what happens to that child after he leaves the custodial parent's charge. What is wrong with saying that the access parent is responsible for that child?

Mr. Shipley: I am still having trouble understanding what the additional responsibility is that is being imposed upon the parent with access, the responsibility that he would not have under the law as it is now. What additional duties are you placing on him or her, as the case may be?

Mr. Elston: I suppose the same thing probably. You asked about financial support when the child is in his care, or at least you made the analogy, is the person who has access then required to support the child financially when the child is with him? I presume the answer to that would be yes. He cannot let the child go wanting. But I do not suppose there could be a court application to have the custodial parent pay for the child to stay with the access parent.

Mr. Shipley: I would not suppose that there could not be a court application about anything. As I said, the minimum level of care is already prescribed by both the Child Welfare Act and the criminal law. If you have someone in your care, you cannot let him starve, but you are not obliged to clothe him and outfit him in the finest style.

Mr. Elston: I think we will leave it there because there is a confusion. I rather do support the idea of my friend, and if my friend Mr. Williams can come up with the wording for a new subsection dealing with responsibility I would be pleased to consider it, maybe even before the question was put, to see whether or not this is a good place to have the amendment.

The Acting Chairman: Does anybody have any further comment or point to make which has not been made?

Mr. Williams: Just to conclude my remarks, Mr. Chairman. Again, I just feel that while I am at a disadvantage in not having had full access to the bill as it has been proceeding through hearings and so forth and as to whether it may well be the legitimacy of introducing this concept somewhere else into the act to spell it out clearly, I am just not given to the idea that this is the right place. Let alone the syntax being open to question, I just think that it makes this section very cumbersome and goes beyond the specific intent of the amendment. On that basis I would not be supportive.

Mr. Elston: Maybe the legislative draftsman could help us to make it fit in better in terms of the wording.

5:10 p.m.

Mr. Williams: I would certainly be prepared to hear from the minister as to whether he feels there is a need for this somewhere else in the bill, given that the point has been raised by Mr. Renwick. He might want to give that some thought over the next short while and see whether it needs to be incorporated elsewhere, but I just do not think that this is the spot for it.

The Acting Chairman: With respect to the amendment to the amendment, as proposed by Mr. Renwick, all in favour of the amendment to the amendment? All against?

Motion negatived.

The Acting Chairman : With respect to the amendment itself, as moved by Mr. McLean, all in favour? Opposed?

Motion agreed to.

Mr. Renwick: Mr. Chairman, could I ask the clerk if he would be good enough to run through what sections of the bill we have passed? I am out of date.

Clerk of the Committee: We have carried section 1 and sections 18 and 19. We are presently on section 20. We have not dealt with sections 21 to 41, inclusive. We have not dealt with sections 42 to 47, inclusive. We have carried sections 48 and 49 and sections 50 to 62, inclusive. The remainder have not been dealt with.

Mr. Williams: The whole section on guardianship has been dealt with.

The Acting Chairman: The amendment as proposed by Mr. McLean to subsection 20(5) has been carried. Are there any comments with respect to subsections 20(6) and 20(7)? If not, shall they carry?

Section 20, as amended, agreed to.

On section 21:

The Acting Chairman: Mr. McLean moves that section 21 of the act, as set out in section 1 of the bill, be amended by deleting subsection 2.

Hon. G. W. Taylor: We are removing subsection 2 from section 21 so the section would read section 21, subsection 1. The background on that, Mr. Renwick, is, as you recall, there was a BC decision and there was a constitutional problem. That, I understand, has now been removed--

Mr. Renwick: Yes, I understand.

Hon. G. W. Taylor: --and we no longer need that subsection.

Mr. Williams: There were proceedings under the provincial court, family division. What was the BC decision that affected it?

Hon. G. W. Taylor: Mr. Shipley, you might explain more in detail that decision.

Mr. Shipley: Yes, I would be very glad to speak about that. There was a decision in the British Columbia Court of Appeal holding that, in essence, family courts did not have jurisdiction to make custody orders, and that was appealed to the Supreme Court of Canada. Judgement was reserved for about a year.

We did not know what the outcome was going to be, so we had to enact this provision, subsection 2. We had to put it in the bill in the event that the Supreme Court upheld the British Columbia decision. Fortunately, justice prevailed and the Supreme Court, in its wisdom, decided that family courts did in fact have jurisdiction to make custody orders. So this section is no longer necessary.

Mr. Williams: Do you have the style of cause in that case, just for reference?

Mr. Shipley: It is referenced as something concerning the British Columbia Family Relations Act and it was decided by the Supreme Court of Canada on January 27.

Mr. Williams: Maybe you could let me know after if you have the specific details of the appeal.

Mr. Shipley: Yes.

Mr. Williams: So it is clearly redundant.

The Acting Chairman: Is there any further comment?

Section 21, as amended, agreed to.

On section 22:

Mr. Renwick: I have an amendment. I do not want to put my colleagues who were not here with us at a disadvantage. I think I had distributed all the amendments in January.

Mr. Williams: Is there just the one amendment to section 22?

Mr. Renwick: Yes.

Mr. Chairman: Mr. Renwick moves that subclause 22(1)(b)(vi) be amended by inserting after the word "convenience" the words "and necessity."

Mr. Williams: I would like to hear from the mover of the amendment the reason for the proposal.

Mr. Renwick: Yes, if I may. You will notice that subclauses (i) to (vi) of clause b are conjunctive provisions; they all have to be in effect, as I understand it. Subclauses (i), (ii), (iii), (iv) and (v) are very clear and distinctive directions to the court. I was concerned about the very clear question, such as

subclause (i), "that the child is physically present in Ontario at the commencement of the application for the order"; that presumably is a factual matter that can be very clearly determined. Let me skip to any one of the others, "that no extra provincial order in respect of custody or other access to the child has been recognized by a court in Ontario"; and "that the child has a real and substantial connection with Ontario."

Then it seems to me, having very clearly established in subclauses (i) to (v) the connection of the child to the province of Ontario, on the basis of which the court shall only exercise its jurisdiction, can be readily cut down if somebody then says, "On the balance of convenience it is not appropriate for the jurisdiction to be exercised in Ontario." It seems to be much too soft a phrase for me to understand why it should be just left to a matter of convenience as such.

The term "convenience", I think, has a fairly clearly understood connotation and is certainly well known in relation to grants of licences of one kind or another, such as of public convenience and necessity. The two terms together seem to me to have a very clear meaning. I think the very fine provisions of clarifying the jurisdictional question as set out in section 22 are cut down a great deal when you come to this business that on the balance of convenience it sounds like, "Oh, well, on the one hand; on the other hand, even though all the other connections are there it is just not convenient for it to be dealt with."

5:20 p.m.

I thought it was very loosely worded in that connection and I tried to tighten it up by emphasizing the necessity part, the necessity part carrying with it that it is not only convenient but also necessary because of the cumulative effect of each of the very close connections established in items one to five preceeding it.

That is the substance of what I was trying to get at. Otherwise a court can deny jurisdiction, as I see it, because they can simply say: "Oh well, all these other things are here and so on and so forth. The child is not habitually resident in Ontario. The court is satisfied that one, two, three, four and five--that's fine; they are all applicable, and there is the question of jurisdiction. But, oh, well, it is not convenient so we will not." I felt it was most important to have it tightened up.

Mr. Elston: Mr. Chairman, I had neglected earlier to indicate that there are two members of the Canadian Bar Association family law section here in the room with us and since they are the practitioners I wonder if they might not be asked to come to the table here and assist us from a practitioner's point of view, since most of us are new in dealing with this legislation.

That would perhaps give us a better feeling for the meaning some of these words--for instance "and necessity"--would have from a practitioner's point of view. If that is acceptable I think it is well worth our while. It is a practice we have adopted here at the committee when dealing with other pieces of legislation.

The Acting Chairman: As a new member of the committee I might ask the members of the committee who were here before to enlighten me a little bit. Have witnesses already been heard with respect to these various sections and presentations made at that time?

Mr. Elston: There have been witnesses who were here, that is correct. However, as you know, the four current members here, for instance, of your party, Mr. Chairman, were not here when those people gave their evidence. On top of that I might indicate that throughout the clause-by-clause with the Business Corporations Act, and as well when we were dealing with the Children's Law Reform Act in January, we had representatives from the practising bar and we looked at them as resource people as well. But if the committee decides that they do not want to have them then it is up to the committee.

Mr. Renwick: Mr. Chairman, it was not so much in their role as witnesses; they had made presentations as witnesses. But we had the benefit in the committee of a little free expert legal advice from some specialists in the field of law. I thought it was extremely helpful to us to have them express their views on the implications of some of these clauses. I thought it was certainly of value.

Mr. Breithaupt: I might say, Mr. Chairman, that over the years when we have dealt with the more technical bills, such as securities legislation or insurance law, we have had the opportunity to have representatives of associations or groups that had been particularly involved sit with us and ask permission from time to time to make a comment on a particular section where their views might be of help to the committee.

I think that has been found useful generally and it usually resulted in better law because some comment that we might think might have been of great value is seen by a practitioner either to have been attended to otherwise or to not achieve what we may have innocently thought it might. We have done that on occasion and it has proven to be a useful practice which in no way, I think, prevents the committee from proceeding at its own pace as it wishes, either accepting the comments made or--

Mr. Williams: Mr. Chairman, it is my understanding, as Mr. Elston has confirmed, that the committee sat during the summer for this express purpose.

Mr. Elston: That would be in January.

Mr. Williams: Was it January? I'm sorry. They sat during January to have the benefit of this input from those skilled in the laws and other interested parties. As Mr. Renwick has said, it is a very useful process; but it is my understanding that those hearings were set up specifically at that time for that purpose and I think it is most unusual for that process to be continued or engaged in when it is actually before a committee while the House is in session and is deliberating on its clause-by-clause.

I think the input that was provided at that time was useful

and that it would be interesting to hear what their point of view was, which I am sure you, Mr. Elston, or others who were present could convey to the other members of the committee who were not present to give us the thinking that might revolve around the amendment we have under discussion. But it seems to me that now is not the time to go back to that forum where we have continuing input from the public. I would agree: I support it in principle, but I thought we were past that stage and in the stage where it is up to the members of the Legislature now to make those clause-by-clause decisions.

Mr. Breithaupt: Of course, it is our obligation to make those decisions. What has been said though is that where technical legislation has come before us we have often had the opportunity of hearing a comment on occasion with respect to the terms of a particular section, and I suggest that we have made better law as a result. If there is a specific comment perhaps we could at least have the chairman notify us that there is a comment on a particular section or amendment that anyone might wish to assist us with. So long as the comments are brief and we do not review entirely some submission that was made earlier, even though most of us were not there for those submissions, I think it might be a useful tool that we could have.

Mr. McLean: As a new member, and not having had the benefit of all the delegations you had before, I think there is no doubt that people would have some good points. But I also say that our own legal staff have taken all these comments down and have dealt with them, and I presume that you people who have already been on the committee have a fair knowledge of what has gone on. I would think that if we opened it up to have somebody come and ask questions we would be opening it up so that anybody could come in. You cannot just have one group.

Mr. Breithaupt: That is the way we have done it.

Mr. McLean: Yes, but I do not think that you could go back now and say that because somebody is sitting in this room he should be able to sit up at the table and be asked a question.

Mr. Elston: Mr. Chairman, I wonder if I might--

The Acting Chairman: If I might interject here, Mr. Renwick was next, then Mr. Kolyn and then--

Mr. Renwick: There are two separate and distinct points. We have always followed the practice--I am not talking about people sitting at the table; that is the second point, and it is quite a different one--that after the presentations were made and when we were going through clause-by-clause discussion of a bill, if there were persons in the audience who had a special interest in a particular section or a comment to make, they were entitled to present that comment at that time, because we do not have before us a chart showing each section of the bill on which all of the people made representations before we started clause-by-clause, giving us a cross-reference of the evidence that was before us about the particular section.

We have an obligation to be aware of what the public has said on any section of the bill. Therefore, I would have assumed that it is normal practice that if members of the public who happen to be here from the Canadian bar, or anybody else in the room, when we come to a particular section wished to say, "I have a comment to make about this section," we have an obligation within the limits that Mr. Breithaupt has stated--a brief comment because we have had the previous full presentations--to give them not only the courtesy but the right to refresh our memories and tell us what their concerns are.

5:30 p.m.

The second point was that having people at the table because they are specialists and have a special interest in the field could be of help to the committee. With great respect to my friends at the table, they are not my legal department; they are the legal department of the ministry of the government that is introducing the bill. They are not the staff of the Legislative Assembly of Ontario. The legislative counsel is, by tradition, part of the staff, but the counsel to the minister are not counsel to the committee. It is extremely important that we not cut down a very ancient tradition.

The second point is a separate one. It would be extremely helpful to the functioning of the committee if the two representatives from the Canadian bar were able to participate with us at the table. That is just a matter of convenience. But I would not want any ruling of this committee to cut down on the fundamental right of anybody in the room when we come to a particular clause to be able to say, "I have a comment that I want to make about this."

Mr. Kolyn: I happened to be here that last Friday. We did have them sitting here at the table and near the end we had a little bit more than a few comments. We got into a little bit of a discussion over it.

Mr. Renwick: It was extremely helpful, actually.

Mr. Elston: We did have a fuller discussion because we had the expertise of Miss Kiteley not only to help us with that last section and that last vote, which turned over everything we had done in the previous two or three hours, but also to give us comments on various other subsections as to what they would mean to a practitioner. It has already been indicated that particularly the new members are not legally trained. There was some comment earlier that perhaps they could benefit from understanding what legal thought processes go on when you read a section.

If you want to read the committee's Hansard for the Business Corporations Act, the amendments we made there, we relied almost exclusively on gentlemen from Osler, Hoskin and Harcourt, who did a lot of the drafting but who also were involved in the securities business and who were also involved in the national energy program from the federal standpoint as well, so that we would have the--

Mr. Breithaupt: Proper companion legislation.

Mr. Elston: Well, the proper companion legislation, as my

colleague says, but also so we would maintain an understanding of how the securities businesses operate, because we were, quite frankly, naive. I suggest that with as many new members as we have here dealing with this piece of legislation this committee to a large extent is naive concerning the ramifications of the amendments we are making. I am asking that we show the courtesy of allowing the people to be heard and allow them the convenience of being at hand to deal with some problems that can arise with the amendments that are being proposed.

With that, I commend to the new members the Hansard of these proceedings and the Hansard of the proceedings for the week before that so they can see exactly what has gone on in this committee and how we have relied on the experts to help us.

Mr. Williams: Mr. Chairman, I have to take into account the observations made by my colleague Mr. McLean. I think they hit the nail on the head as to where we are in dealing with this bill in the clause-by-clause deliberations.

First and foremost, for the record I want to indicate that, in my mind, in no way are we taking away from any of these time-honoured traditions that Mr. Renwick is referring to by preventing any interested spectators from participating at this time in the debate. The time was provided, and it took place in January.

At that time Mr. Renwick, Mr. Elston and others had the opportunity of having input from people learned in the law and others who had an interest in the matter. The staff of the ministry were present and gave their comments with regard to the various views expressed by those witnesses. If you feel at this time that their observations were particularly relevant and important on this particular amendment or other amendments that are coming forward, I am sure that you, as a member who was present at that time, would take time to advise the committee and certainly the staff will advise us that certain views were expressed by interested witnesses.

To now allow further public participation, would be, as Mr. McLean said, usurping the responsibility of legal staff and counsel here. They are here to advise us and I am sure if this particular amendment and others were commented on by these outside witnesses, the legal staff could advise us and tell us what the difference of thinking was between those views expressed by the witnesses and by our own legal staff. I think it would be inappropriate at this time to extend the privilege that was made available during January and we should now carry on with our responsibilities of dealing with the bill on a clause-by-clause basis without further public input.

Mr. Elston: Mr. Chairman, if I might, I am sorry I raised the matter; we have wasted time on it. I apologize to the committee for raising the question. If it is necessary, I will withdraw the question so we can get on with dealing with the legislation rather than getting in to a further tangle. I think we should get on with these amendments.

Mr. Stevenson: I just wanted to correct possibly one assumption here. New members on this side at least have been presented with some briefing materials and summary materials.

Although we probably are not as familiar with some of the things as those who did sit on the public presentations, certainly we are at least somewhat informed on the issues that were raised and I think we are prepared to handle and carry on with the bill.

Mr. Elston: There is a certain point of view that is being developed here. You are going to pass the amendments that are suggested by the Attorney General and you are going to defeat the amendments that are put by others and we are not going to have any comment on it. I think you might as well close it off and let us get on with something else. I will be very surprised if there are any other amendments that are passed.

The Acting Chairman: I do not really think that the correct discussion is getting us any further and I would suggest that we revert to the amendment to subclause 22(1)(b)(vi) as proposed by Mr. Renwick. Do you have any comments with respect to that particular proposed amendment?

Mr. Renwick: I would certainly like to say, Mr. Chairman, to the members of the public, if there is anybody in the public galleries here who wants to comment on any section of the bill and has difficulty getting the eye of the chairman, I would be glad to meet with them and prepare the amendment or try to make the point on their behalf if they are going to be precluded from participating in the committee. To change the process of the committee this way is to me a very serious change and cannot be made.

I say to my friends it is not a question of whether you are a new member or an old member, or whether you have done your homework or have not done your homework, or anything else. The fact of the matter is that, in the absence of a cross-reference of all of the evidence which is in front of us, itemizing each point, naming the members of the public who have made the point, so that I can go through it and I can say when I get to clause (22)(1)(a), this association commented on this on page such-and-such of our transcript, this association commented on this and Mrs. So-and-So commented about this, we are not discharging our responsibilities.

We solved the problem on Bill 7 by doing exactly that. We had staff for the committee who prepared a cross-reference book which showed each and every section of that bill. In that case we did not allow repetition by intervention because of the complexity of the bill and the number of representations that have been made, but that was because of the volume of the work. We solved the problem of having that table of concordance, or whatever the hell you want to call it, showing on each section of the bill what association or what member of the public had commented and what the comment was, so we were aware of it. For us to go through a very specialized form of bill without the assistance of those members of the public who are knowledgeable is a default on our part and I do not want to have any part of it.

5:40 p.m.

Mr. Williams: Mr. Chairman, I have to respond. I think that Mr. Renwick has every right as a member of this committee in putting forward his amendments and setting out the reasons therefor.

He is fully entitled to do that, if the reason he is putting forward is based on an argument that was put forward by a member of the public, and to draw that to our attention. If that is the reason he is putting an amendment forward, the members of the committee would most certainly be interested in hearing those observations.

If you have a compendium of all the presentations that were made by the witnesses and it is on that basis that you are presenting the amendments--

Mr. Renwick: No, I have not. These amendments are amendments which I prepared; they were presented in the very early days of the committee. I do not know why it is that I cannot express myself clearly.

My amendments have nothing to do with what other people may have presented before the committee, but in here we heard representations about various sections of the bill. Either the members do their homework and someone draws to our attention when we get to a particular clause that this was a clause that so-and-so commented on in the public presentation on such-and-such a day at such-and-such a time and it is on page 13 and we had better look at it, which is one way of doing it, or we ask the members of the public who are here to make the comment themselves when we come to the section of the bill.

That is a process we have followed for a long time and it antedated my being here and it has always worked. It seems to me that for us to change that process is a most unwise move. I do not know why we do not let people comment about it.

Mr. Williams: With respect, Mr. Renwick, we are not changing the process.

The Acting Chairman : Gentlemen, with respect, I think it is time the committee proceeded with the legislation before us. We have spent nearly half an hour discussing this one procedural point, which was not even in the form of a motion, as I recall, and I think it would be better to proceed with section 22.

Are there any comments with respect to the amendment as proposed by Mr. Renwick?

Mr. Breithaupt: Mr. Chairman, I would like to hear from the counsel to the Ministry as to whether they feel that it would be useful to add the additional words "and necessity" to clarify the seriousness with which we would view any rejection of jurisdiction because of the wording that subclause 22(1)(b)(vi) now has.

Hon. G. W. Taylor: I was just going to comment, Mr. Chairman, that Mr. Renwick has acknowledged certain features of clause 22(1)(b) that the court is satisfied about and then it lists some of those specifically as to what they should look for. Then you go down to the final one, that on the balance of convenience it is appropriate.

Those words or similar words are often used throughout the laws and pieces of legislation to determine where the forum will be

and whether or not it has jurisdiction. Just the bald adding in of "and necessity" into that section, as the amendment reads, might put a greater strain on the court to find also a necessity to have that court or that forum hear the matter. It might put an extra onus on it, and I use that just in looking at the bald words, "and necessity." On "balance of convenience", there is a wider situation. There may be other forums also could hold it on a balance of convenience, but if you add "and necessity" it might be a heavy onus.

I put that to the committee members as a comment. Mr. Shipley has some other matters he would like to comment on in regard to that amendment in that section.

Mr. Shipley: "Balance of convenience" is really attempting to try to put into English the legal concept and the Latin phrase, "forum conveniens."

Mr. Renwick: Which one?

Mr. Shipley: That's why it is "balance of convenience" rather than "forum conveniens," or whatever it is. I think that is a well-established legal concept, even if we cannot pronounce it very well. We are trying to make our statutes a little more readable and have tried to translate that into English by saying balance of convenience. I think the courts are quite capable of incorporating that concept and understanding what it means.

Another reason it is important to maintain the drafting as it is here is that this is one of the key sections in a new uniform act to deal with custody, jurisdiction and enforcement. This was mentioned at the earlier sittings of the standing committee. If we were to amend this section, which is certainly one of the most important sections in the uniform act, then we would be out of step with the other provinces that have this legislation under consideration as well.

Mr. Renwick: I gather they are going to do it already in one bill. The Surrogate Courts Act is out of step with the uniform bill. Every time we are faced with a uniform bill, we cannot be faced with this proposition that we are going to be out of step. We might as well not be sitting here if every time it is a uniform bill. We had better just click our heels, bow and pass it.

Mr. Breithaupt: --it is like local autonomy--

Mr. Williams: I just want clarification. You said we would be out of step with other provinces in that they have this catch-all phrase, the term "on balance of convenience." Mr. Renwick, is that what you were referring to when you said we would be out of step as far as reciprocal rights in effect might apply?

Mr. Shipley: In August 1981 the Uniform Law Conference of Canada, which is responsible for drafting uniform legislation, or model legislation that is recommended for all provinces to adopt, adopted a new uniform act dealing with jurisdiction to make custody orders and to enforce them. That act, the new 1981 uniform act, is based, almost word for word, on the provisions that are in this act, including section 22. Consequently this drafting, and that uniform

act, is the one that has been recommended to all provinces for adoption. No other province has adopted it yet.

Mr. Breithaupt: It seems to me that is what you meant. This act really conforms with the uniform act, but we do not know what other provinces might do.

Mr. Shipley: That is right.

Mr. Williams: Has this been given support in principle, the uniform law?

Mr. Shipley: In the uniform law conference, it has been adopted, but the other provinces have not yet enacted it. It was only adopted last August. They now have it under consideration. They will be looking to Ontario to see how we proceed.

Mr. Williams: I think that is one thing we may have in common as lawyers, that we all are supportive of the work in the uniform law conference in trying to provide in the different provincial jurisdictions, legislation that is consistent and that has uniformity. This is the prevailing thought that applies among the lawyers who are advising comparable committees in legislatures in other jurisdictions so that this type of provision would complement what might be proposed in other jurisdictions. I think that is something that we have to give serious consideration and support to.

5:50 p.m.

Mr. Elston: I just point out, Mr. Chairman, that, according to one press account of the Ontario legislation, it is described as "model legislation for Canada," which also sort of puts us into the forefront. If there is an area that we can improve upon, we ought to improve it so that the other provinces can follow us. That has always been a big feather in the bonnet of lots of the ministers when we are dealing with programs.

If we can improve upon it, then we ought to do it, because it seems according to one Ontario government lawyer, who obviously commented to the Deborah Dowling who wrote this article, that perhaps we can set the trend. Through this legislation we will be able to determine how effective it is. I do not think we ought to exclude amendments such as this just because it may have upset one Ontario lawyer's scheme of things.

The Acting Chairman: Mr. Shipley, have you finished with your amendments?

Mr. Shipley: No. That is one of the reasons for preserving the form and preserving the form of a number of other sections.

So far as adding the word "necessity" goes, looking at that aspect, it seems to me that it may impose a condition that will not always be to the benefit of the people who are trying to have a custody order made in Ontario. This was very much in the minds of people who have worked on these provisions. There were many people

who worked on the uniform legislation. It was the result of a lot of consultation and a lot of discussions.

One of the situations you would get into is if you had two parents from another province--they could be from British Columbia or Alberta; it does not matter--and they are now both here in Ontario. They may be here for a year going to graduate school or something like that, so you cannot say their child is habitually resident here. But the child is physically present here, so other criteria are met.

The court also has to be satisfied that it is necessary that the Ontario court exercise jurisdiction to make the custody order. Then the court may very well find that it is not necessary, that they can go back to British Columbia, as they would have to do in many other cases, and have the case decided. I think it is closing the door just a little bit too tightly in a number of cases.

Mr. Williams: That certainly was my concern. While I appreciate Mr. Renwick's observation, relying on convenience only seems to lead at the very least to introducing a double provision and, of necessity, is overly restrictive.

The provision there is a catch-all that allows the courts to exercise their judicious discretion, having taken into account the five preceding specific points, that there may be other extenuating factors that nevertheless require the courts to exercise the discretionary ruling. To impose that additional requirement or condition of necessity would overly limit that discretion of the judiciary to do what they feel in the overall would be in the best interests. While I realize "on balance of convenience" leaves it wide open, it obviously is a discretionary clause and intentionally so. We must leave that discretion to the courts, because I certainly would not like to see--

Mr. Renwick: Mr. Williams, the Acting Attorney General and Mr. Shipley have been so persuasive that if the other members of the committee will consent, I will withdraw my amendment.

The Acting Chairman: We have the consent of the committee members?

Motion withdrawn.

The Acting Chairman: Mr. McLean moves that clause 22(2)(b) of the act, as set out in section 1 of the bill, be deleted and the following substituted therefor: "(b) Where the parents are living separate and apart, with one parent under a separation agreement or with the implied consent or acquiescence of the other or under a court order; or."

Any comments with respect to that proposed amendment?

Hon. G. W. Taylor: If I can do it very quickly, I do not want to get back into the other comments we had earlier, but in between the last time we sat on this and this period of time, the staff of the Ministry of the Attorney General have gone over the previous amendments, have gone over some objections and these

amendments being brought forth now to the Attorney General are as a result of the review and comments that have been made earlier. Not all of them have been accepted for amendments, but some have been and the ones that you see coming forth are generally as a result of comments made previously or amendments that we have seen on the table. Mr. Shipley has a comment on the reason for this particular amendment as it sits.

Mr. Shipley: Yes. I would just point out that we did meet with the Canadian Bar Association and this was an amendment brought to our attention. It merely makes this section consistent with the wording in the previous subsection, which was subsection 20(4). In the present section, the one we are talking about now where the amendment is, we talk only about implied consent. In the previous part of the bill we talked about consent, implied consent and acquiescence, so we just wanted to make those two consistent.

The Acting Chairman: Any other comment? Shall the amendment to clause 22(2)(b) as proposed by Mr. McLean carry?

Motion agreed to.

The Acting Chairman: Shall subsection 22(2) as amended carry?

Motion agreed to.

The Acting Chairman: Shall subsection 3 carry?

Motion agreed to.

The Acting Chairman: Shall section 22, as amended, carry in its entirety?

Section 22, as amended, agreed to.

Section 23 agreed to.

On section 24:

The Acting Chairman: Mr. McLean moves that subsection 24(2) of the act as set out in section 1 of the bill be amended by deleting "all of the circumstances" in the third line and inserting, "in lieu of thereof all the needs and circumstances."

Any comment with respect to that?

Mr. Renwick: I have two amendments to subsection 24(2) and I believe they deserve some discussion because of the importance of this clause. Perhaps it being almost six o'clock we could adjourn at this point until tomorrow morning.

Mr. Williams: Is that amendment contentious or could we deal with that?

Mr. Breithaupt: We will accept that last amendment now.

The Acting Chairman: Shall Mr. McLean's amendment, as introduced, carry?

Motion agreed to.

The Acting Chairman: We shall now adjourn until tomorrow afternoon.

The committee adjourned at 5:58 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHILDREN'S LAW REFORM AMENDMENT ACT

FRIDAY, APRIL 2, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)

VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)

Brandt, A. S. (Sarnia PC)

Breithaupt, J. R. (Kitchener L)

Elston, M. J. (Huron-Bruce L)

Eves, E. L. (Parry Sound PC)

McLean, A. K. (Simcoe East PC)

Mitchell, R. C. (Carleton PC)

Renwick, J. A. (Riverdale NDP)

Spensieri, M. A. (Yorkview L)

Stevenson, K. R. (Durham-York PC)

Swart, M. L. (Welland-Thorold NDP)

Substitution:

Laughren, F. (Nickel Belt NDP) for Mr. Swart

Clerk: Arnott, D.

Staff: Tucker, A. S., Legislative Counsel

From the Ministry of the Attorney General:

Shipley, A. Q., Counsel, Policy Development Division

Taylor, Hon. G. W., Acting Attorney General

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, April 2, 1982

The committee met at 11:36 a.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 125, An Act to amend the Children's Law Reform Act.

On section 24:

Mr. Chairman: Will the meeting come to order. I understand we are at section 24(2), and I have from Mr. Renwick's original motions two amendments to section 24(2).

Mr. Renwick: Where is the minister?

Mr. Chairman: Oh, I am sorry. I have everybody here but the minister.

Mr. Breithaupt: I think there are three, Mr. Chairman. We're doing items d, f and h.

Mr. Chairman: Items d, f and h. You're correct.

Mr. Renwick, I'm sorry to break up your conversation. I forgot, I guess, the person who is the most important in the place.

Mr. Renwick: It doesn't make much difference. That's the way this committee has been operating. I might take the opportunity to say simply what I intend to do on the bill as far as I am concerned, not so far as anybody else is concerned. The change in the procedure of the committee is such that it is not worth my while to waste time in the committee--and I am sure other people feel this way as well--attempting to discuss rationally the provisions of the bill and to obtain amendments that are reasonable and appropriate so the legislation will be adequate.

I therefore intend to continue to place the amendments. I intend, if you provide me with the opportunity, sir, to give a very brief comment about the reason for it, but I do not intend to engage in discussion about it. It is a combination of the majority of Conservative members, coupled with the total inflexibility of the ministry on these matters, that has brought the committee to the point where it is an unsatisfactory method of proceeding.

I would not even bother putting the amendments except that we have the fortunate practice, which I hope the Conservative members will not overrule, of recording the proceedings of this bill, so at least there will be a record of the amendments we have tried to put before the committee. But there is certainly no point in wasting my

time in rational discussion of the bill and its proposals because the catch 22 is that even if some of my colleagues in the Conservative Party were to believe that an amendment deserved consideration, we would immediately be told by the ministry, of course, either that this is a uniform bill and we cannot change any of the words in it or that the expertise of the ministry is such that no ordinary mortal, such as a member of the committee, could possibly improve it in any way.

For those reasons, I would like to expedite the processing of the bill back into the House. But I would like to have the opportunity to place the amendments you have that stand in my name and the amendments that, I am sure, other of my colleagues in the Liberal Party will wish to place on it, to have a very brief discussion and to see if we can complete the bill and get it reported as quickly as possible. Fortunately, there will be a record of some effort having been made to indicate the kind of amendments that, when either the Liberal Party or our party form the government of the province, we can expect will be made to this legislation in the latter part of this decade.

Mr. Breithaupt: Mr. Chairman, perhaps I might speak briefly just to the comments made by Mr. Renwick. I regret the necessity, as he sees it, of dealing with the variety of amendments that have been suggested in the manner he finds to be the only suitable one in the circumstances.

There is one other point I think I should reinforce probably at this time with respect to decisions made by the committee in your absence yesterday. As you will recall, Mr. Chairman, in dealing with technical bills, we have ordinarily had the opportunity on occasion of having various interested persons speak to particular amendments as they were being dealt with in sequence. This has been particularly been the case when we have not had a concordance of comments made during the presentations as they affect a variety of sections so we try to ensure we do not miss anything that might have been commented upon and is worthy of consideration.

11:40 a.m.

However, yesterday the committee decided that the representatives from the family law section of the Canadian Bar Association, or really anyone else, would not be called upon to make even a brief comment as we go through the bill on a section-by-section basis. That decision presumably was based on the thought that the opportunity had been made for any public input to have occurred during January and the solicitors in the ministry presenting the bill to us would have had the opportunity of considering those suggestions and perhaps making changes if they felt them appropriate, and if the minister agreed and was prepared to present those amendments to the committee.

I do regret that that was done and I hope it will not be a precedent for future dealings because I believe we make better law when we have the opportunity even for a brief comment from an interested noncommittee member while we are going through the clause-by-clause stage. This becomes even more important when we recognize that half the members sitting in the decision making of

the clause-by-clause process in this committee were not members at the time of the presentations in January and indeed may not have had the opportunity of thoroughly reading Hansard and familiarizing themselves with them because obviously we all have many things we have to do from time to time.

I hope that if the occasion does come forward where a comment may be necessary from a nonmember of the committee on a particular section that the committee may consider the advisability of that brief comment. Obviously we do not wish to have a full review of all the evidence--of course not--but if the occasion does come forward I hope members will consider the circumstances at that time and that way we may well have improved legislation.

I must say again our comments will not be lengthy as we deal with the variety of amendments which both opposition parties will propose. It is apparent that the likelihood of their being accepted is quite slim. However, I believe, along with the member for Riverdale (Mr. Renwick), they should be put on the record since that may be useful to those considering how the legislation developed and got to where it is when they consider changing it in the future.

Mr. Chairman: Thank you, Mr. Breithaupt. Shall we then proceed with subsection 24(2)?

Could someone assist me as to where we left off? There is Mr. Renwick's amendment, clause 24(2)(d). How far was it carried exactly? Was any portion of 24(2) carried?

Mr. Breithaupt: The government amendment was placed and carried.

Mr. Renwick: To subsection 24(1).

Mr. Chairman: To subsection 24(1), correct. Sorry, Mr. Renwick, would you please repeat that?

Mr. Renwick: We are now commencing at subsection 24(2), I believe.

Mr. Breithaupt: That is correct.

Mr. Chairman: Either I am being stupid--24(2) has many clauses--

Mr. Breithaupt: There were two words added in the third line of subsection 24(2) as an amendment placed, and that was agreed to, so you might say the preamble which that subsection 2 has has been attended to and we are now dealing with the further clauses, (a) to (g), of subsection 2 of section 24.

Mr. Chairman: Correct. Thank you. I had better do the whole thing and then go back and pick up subsection 2 in its entirety. Are there any comments regarding 24(2)(a)?

Mr. MacQuarrie: With respect to this particular subsection, particularly subclause 24(2)(a)(ii) where it refers to other members of the child's family who resides with the child,

taken against the background of the clause immediately preceding it, this would seem to confine itself to members of the child's family residing with the child at the time the application for custody or access is made, rather than the other alternative of members of the child's family residing with the applicant in another residence.

For instance, in the case of a father and mother, each with custody of one or more children, bringing an application for custody, we have the situation where the court, in considering the circumstances, is directed particularly to the members of the family that the child is residing with and not necessarily to members of the family residing with someone else or in another residence. It leaves a bit of confusion in my mind.

Mr. Breithaupt: An example that I would see there would be that the child might have been residing with the father's parents, the child's grandparents, and then the father in the same community makes an application, whereas the mother making an application might be living in British Columbia or planning to return there or whatever. So the emotional ties perhaps with grandparents with whom the child had been living would be a useful point for the court to consider. I would think that could be included in subsection 3. I do not quite understand your concern with respect to subsection 2 of that subsection.

Mr. MacQuarrie: Really, what subclause (ii) of that subsection does is restrict, if you will, the family ties to those members of the family with whom the child resides, as opposed possibly to members of the family residing with someone else, in particular, possibly with the applicant.

Mr. Breithaupt: It would be a deduction from the chairman's opinion.

Mr. MacQuarrie: I just sense some confusion in that, Mr. Chairman; that is why I raise it. I am not hung up that much on it.

Mr. Mitchell: Since Mr. MacQuarrie raised it perhaps the minister or his staff would care to comment on the points raised by Mr. MacQuarrie.

Hon. G. W. Taylor: Go ahead Mr. Shipley.

Interjection: He said hopefully.

Mr. Shipley: Where you do have a situation in which there is an applicant who is not residing with the child, but there has been someone in that family situation who has been involved with the child, I think that paragraph 3 would come into play, persons involved in the care and upbringing. Also, the court is required to take into consideration under clause (f) the permanence and stability of any proposed custodial home and under clause (e) any plans proposed for the care and upbringing. So persons associated with the applicant who are not residing with the child would be taken into consideration there.

11:50 a.m.

Another problem, since the court is required to consider all the circumstances including other members of the child's family, is that if we did not add the rider "who reside with the child" then the court would have to consider all other members of the child's family and there is no limit then. The child's family includes aunts, uncles, cousins, grandparents, who may not have any association with the applicant or with the child. We have to come to some realistic cutoff point.

Mr. MacQuarrie: An instance I might refer to is a very practical situation that I have encountered where there is a family of, say, five and one parent takes two and the other parent takes three. We have one or other of the parents giving the former spouse cause for concern about the way in which the children are being brought up. There are particularly close ties between the child and his or her siblings who are residing with the other parent, yet somehow that situation does not seem to be covered in the wording here.

Mr. McLean: We are going through this clause by clause. When we are on (a)(i) or (a)(ii) here, does this have anything to do with what is being discussed at the present time?

Mr. Chairman: Yes. Mr. MacQuarrie is questioning 24(2)(a)(ii).

Mr. McLean: That has been carried.

Mr. Chairman: The amendment was carried, but only the amendment to 24(2).

Mr. McLean: So we are dealing with (a)(i) and (ii)?

Mr. Chairman: And (iii).

Mr. Breithaupt: Mr. Chairman, perhaps Mr. MacQuarrie might agree that since all of these points are referred to in subsection 2, and I quote, "a court shall consider all of the needs and circumstances of the child including" these various items, perhaps his concern could be attended to under that. Would you rather have it spelled out more clearly?

Mr. MacQuarrie: I realize the general wording of the introduction would certainly cover the situation, but it struck me as being rather peculiar to refer to members of the family residing with the child and not members of the family with whom the child might have very close connections. I will certainly concede this could be taken into account, but it is just not given the same sort of emphasis as in the statute, the members of the family residing with the child. Quite often there are members of the family not residing with the child with whom the child has closer emotional and family ties.

Mr. Breithaupt: And yet those persons do not appear in subsection 1 or subsection 3. I see your point.

Mr. Chairman: Are there other comments with regard to subparagraphs (i), (ii) and (iii)?

Mr. Breithaupt: Is there a suggestion that that subsection 2 should be "who do or who do not reside with the child"? Would that be an improvement, or would you just rather say "other members of the child's family," and take out the matter of residence altogether? Is it useful to think of either of those two changes as something which would clarify the situation where, particularly, siblings would not be living together in the same residence?

Mr. Chairman: Would the minister like to respond to that?

Hon. G. W. Taylor: I think primarily it was the decision of the people drafting this. Those recommendations were received to tie it in closely to where the child would be related to in regard to custody, the actual person getting the custody. These are just amplifications of items to look at, in the overall determining the best interests of the child's needs and circumstances.

We have had different discussions as the bill has been going through as to how elaborately to set out these limits in each particular case, and I am sure all of you gentlemen around the table can think up a list longer than your arm for every single contingency. We tried to create the bill so that the judge, or the person hearing the matter, can in the best interests of the child in a general way assess those best interests of the needs and circumstances in the general aspect without having to list all these so that we get a total codification.

As you people who have practised before the courts know, sometimes if you get a codification it causes you more difficulty since the item is not listed when you get into the particular rather than when you stay in the general. I would lean, I think, more towards the general aspects of the best interests of the child so that the person in the forum can then make it on the merits of each individual case, which is another rule of law in these particular circumstances, as in many other areas of the law.

I think that is where I would like to leave it at this particular time, although there are many instances that we have here. Of course one would have to say, when you get right down to Mr. MacQuarrie's situation, that the person the child actually resides with is the one the judge should dwell his attention on, and I am sure he would even if it were not spelled out. When you extend it further, to take the next extreme, does he look at the playmates, does he look at the neighbourhood, does he look at the different clubs, the cub scouts, et cetera, or whatever it might be that the individual would join? I think we are getting a little too generous in setting out the details.

Mr. Chairman: Is there any further discussion on those subsections? Mr. MacQuarrie, I take it you do not want to introduce a motion. Is that correct?

Mr. MacQuarrie: No, Mr. Chairman. It still leaves, to my mind, a bit of possible confusion when emphasis is placed here, particularly when you are looking at members of the family actually residing with the child, and someone else possibly bringing an application for custody also residing with members of the family with possibly closer emotional ties to the child than those with whom the child resides.

This is basically the problem I see. We have the judge's attention directed to this aspect of it and no specific direction at all to the other aspect. As Mr. Breithaupt pointed out, the introductory words to the subsection would not exclude a judge from taking that into account.

Clause 24(2)(a), (b) and (c) agreed to.

Mr. Chairman: Mr. Renwick, do you wish to speak on subclause (d)?

12 noon

Mr. Renwick: I have an amendment to clause (d). Whether the introduction of the words "the needs of the child" in the introductory words of subsection (2) make my amendment unnecessary is a matter about which I would appreciate comment from the ministry.

Mr. Chairman: Mr. Renwick moves that clause 24(2)(d) be amended to read as follows: "(d) The capacity, ability and willingness of each person applying for custody of the child to satisfy the needs of the child, including guidance, education, necessities of life and any special needs of the child."

Mr. Renwick: I believe that the amendment is an improvement upon the present language of clause (d) and emphasizes the broader scope of the word "needs"; and I believe the capacity and disposition terms are perhaps more adequately expressed by the three terms, "capacity, ability, and willingness" of each person to satisfy the needs of the child. I believe that otherwise the proposed amendment is self-explanatory.

Mr. Chairman: Any further comments upon Mr. Renwick's amendment?

Mr. McLean: Mr. Chairman, it makes sense to me. Why would it not be feasible to go ahead with that amendment?

Mr. Chairman: Mr. Minister, do you wish to respond?

Hon. G. W. Taylor: Just briefly. Looking at the two sections, the content appears to be the same. Different words have been used, "willingness" compared to "disposition." The major features of both are nearly identical as to including guidance, education, necessities of life and any special needs of the child. I think Mr. Renwick's motion has just put it in different words. I am advised me that "capacity and ability" are redundant as they are of the same type.

The bill before you describes the disposition of each person applying for custody, whereas Mr. Renwick's has said the "willingness." I guess if one has "a disposition" of each person, included in that would be "a willingness" or one would not be there seeking the application for custody. Thus the disposition is something the court has to make about that individual applying for custody as compared to the willingness.

I go back to the same words. I think if anybody is applying for the custody, there has to be some sort of willingness. If there is not, the legislation would force a situation where that person is made to be the person seeking custody. I would submit that the words of the legislation as put forward would satisfy the veracity of what the court has to decide on better than the amendment Mr. Renwick has put forward. Mr. Shipley might make some comments as to how he feels on the particular amendment.

Mr. Shipley: I am not sure that I have an awful lot to add. I think the intention of the present clause is the same as that of the proposed amendment.

I did spend some time with the dictionaries this morning and satisfied myself that "capacity" and "ability" mean the same thing and that the addition of one word or the other would therefore create a redundancy or would then require the court to struggle with trying to differentiate between them when it seems that they deal with the same idea.

Mr. MacQuarrie: Mr. Chairman, I did not spend any time with the dictionaries this morning, but to my mind, words included in legislation should be capable of being clearly understood. To my mind "willingness" is a lot more easily understood than "disposition," which has a variety of meanings, and I certainly can see no objection to including the word "willingness" in there in place of "disposition."

Mr. Chairman: There are other words in Mr. Renwick's motion besides changing "disposition" to "willingness." There are other ones to satisfy the "needs of." There is a certain change in there.

Are you agreeing with his motion as such, or do you wish an amendment?

Mr. MacQuarrie: Mr. Chairman, when you talk of "guidance and education, the necessities of life and any special needs of the child," I think that well takes care of the word "needs" as put forward by Mr. Renwick. My only inclination at this time would be to change "disposition" to "willingness."

Mr. Chairman: Therefore, Mr. MacQuarrie, if you wish, technically you will have to move an amendment to Mr. Renwick's amendment changing the word "disposition" to "willingness." You are only speaking to that portion of his amendment.

Mr. Breihaupt: Another way to deal with it, Mr. Chairman, would be that if Mr. Renwick's amendment were not agreed to by the committee a further amendment could be placed which would simply replace the word "disposition" with the word "willingness." That is another way of handling it that is probably neater.

Mr. Chairman: Yes. Are there any other comments on Mr. Renwick's amendment?

Mr. Elston: I have one comment, Mr. Chairman. I noticed when I perused the brief of the Canadian Bar Association that they have stayed with the words that are in the section now, that is, "the capacity and disposition of each person." They had some other changes that they suggested for subsection (d), but that seems to indicate at least some understanding on their part of those two words.

Mr. Chairman: Are there any other comments on this amendment?

Mr. Eves: I suppose we could sit here all day and talk about what words mean in the dictionary meaning, but to my mind the words "capacity" and "disposition" are quite well chosen and, to my way of thinking, are much more encompassing words than "ability" and "willingness." I think they cover more things. I am very happy with the wording of the legislation the way it is drafted.

Mr. Chairman: Any other comments?

All those in favour of Mr. Renwick's amendment will please raise their hands.

All those opposed.

Motion negatived.

Mr. Chairman: Mr. MacQuarrie moves that the word "disposition" as it appears in the first line of clause 24(2)(d) be replaced with the word "willingness."

Are there any comments on Mr. MacQuarrie's amendment?

12:10 p.m.

Mr. Mitchell: I would like a comment from the ministry people. "Disposition" and "willingness" to me are--

Mr. Chairman: Excuse me. With respect, Mr. Mitchell, I find that this is dragging. I am having to drag out responses. I suggest that maybe I had better start hammering it through, and if anybody wants to speak, speak quickly or we are going to pass it. Otherwise I am trying to drag out a response here for the sake of democracy, and I do not think I am serving it. If anybody has anything to say, let's say it quickly. Jump in; otherwise I am going past you. Okay?

Hon. G. W. Taylor: Might I suggest to Mr. MacQuarrie that his amendment include the exchange of "ability" for the word "capacity" also, so that in the first line his amendment would read "the ability and willingness of each person."

Mr. Chairman: In place of "the capacity and disposition."

Hon. G. W. Taylor: Yes.

Mr. MacQuarrie: I find that is acceptable.

Mr. Chairman: Mr. MacQuarrie is fine. Are there any other comments on his amendment?

All those in favour of Mr. MacQuarrie's amendment will please raise their hands.

Opposed? I believe that was unanimous.

Motion agreed to.

Mr. Chairman: Are there any other comments on subsection (d)? If there are none, shall subsection (d) as amended carry?

Motion agreed to.

Shall subsection (e) carry?

Motion agreed to.

Mr. Renwick moves that section 24(2)(f) be amended by inserting the word "environment" after the word "home."

Are there any comments on Mr. Renwick's amendment?

Mr. Breithaupt: Perhaps we could hear why he thought that would improve on the--

Mr. Chairman: I believe Mr. Renwick stated he is not going to go into the merits of his argument.

Mr. Renwick: No, I didn't.

Mr. Chairman: Sorry. I guess you are correct.

Mr. Renwick : I have a brief comment of explanation.

Mr. Chairman: Then carry on with your brief comment, please.

Mr. Renwick: The purpose of the amendment is to remove the suggestion that the term "home" refers solely to a physical location, building or portion of space and connotes a broader concept, namely, the home environment, which would include the spatial concept of the physical area comprising the home as well as a number of other factors. I believe it is also consistent with a different solution to the problem proposed by the bar association that the words "home as a" be deleted. If the bar association amendment had been put, clause (f) would have read, "the permanence and stability of any proposed custodial family unit."

I believe that my amendment would accomplish much the same purpose and would read, "the permanence and stability of any proposed custodial home environment as a family unit." I believe that with those words the amendment is understandable.

Mr. Chairman: Are there any other comments on Mr. Renwick's amendment?

Mr. Elston: I can appreciate what Mr. Renwick is saying in developing a much broader overview of what goes on in viewing "home" and all that sort of stuff. I rather liked it when I first heard the amendment proposed by the Canadian Bar Association, which would have eliminated "home as a" in there; then you would just be talking about the custodial family unit, which in effect does the same thing but gets us away from the idea that you have to view that physical element, house or home or whatever. This just says that you take a look at what is happening in the family generally to decide on the stability and permanence of that relationship. I am rather taken with that idea.

Mr. Chairman: Any other comments?

Mr. Breithaupt: Perhaps we could hear, Mr. Chairman, as to whether the ministry is prepared to consider either the addition of the word "environment" or the removal of the words "home as a" because in either of those circumstances it might make the section somewhat more clear.

Hon. G. W. Taylor: Mr. Breithaupt, yes, it becomes just a straight wording and drafting situation that there is a custodial home. One can surmise what that might be. It also places emphasis on possibly a physical structure, although it might not be a physical structure. You have got custodial environment which gives you the same package. It is the surrounding features. Others have suggested that you drop "environment" and drop "home," and have proposed "custodial family unit." It is a matter of anybody's wording preferred to another.

We hope that the words here develop an ambience, a surrounding, so that the person hearing the matter will be able to decide that he is looking at permanence and stability of the unit the child would be placed with or going to, be it custodial environment, custodial home or custodial family unit. All of those are encompassed in here and the added word of "environment" would assist the feature of looking at permanence and stability modified by what the child would be placed in.

Mr. Chairman: Are there any other comments?

Mr. Breithaupt: We have the three choices. I would still like to know which one you prefer.

Hon. G. W. Taylor: I would prefer to stick with the words as they are presently in the legislation.

Mr. Chairman: Are there any other comments with regard to Mr. Renwick's amendment?

All those in favour of Mr. Renwick's amendment, please raise your hands.

All those opposed, please raise your hands.

The vote is tied. By precedence the chair must vote against Mr. Renwick's motion. I believe precedence states that the chair votes for the proposed legislation. Therefore by my voting in the negative, Mr. Renwick's amendment fails.

Are there any other comments with regard to subsection (f)?

Mr. MacQuarrie: Mr. Chairman, getting back to the Canadian Bar Association's suggestion, I was just wondering whether it might have some advantages in terms of expressing a broader concept of a family unit. I suppose if you went to extreme cases, a child might be part of a family unit that was on the move all the time, living with a travelling road show and all the rest of it, with no custodial home as very narrowly described. To my mind, though, home is home and can be taken in a very broad sort of context.

Mr. Breithaupt: Mr. MacQuarrie, do you recall Polly Adler saying a house is not a home as she explained her business operations in New York City?

Mr. MacQuarrie: I am not quite as familiar with that aspect of business operations as you are.

12:20 p.m.

Mr. Chairman: Do you wish to make a motion.

Mr. MacQuarrie: No. I am just wondering what the comments of the ministry are to that.

Mr. Chairman: Deleting certain words?

Mr. MacQuarrie: It seemed to give a broader approach to the whole thing than the words that presently appear in the draft bill. Is that desirable or is it not? Of course, we are into trying to get a meaning for the word "home."

Mr. Chairman: Mr. MacQuarrie, Mr. Taylor indicated previously when there were three choices that he preferred to leave it as is rather than delete the words "home as a." I think perhaps you are asking him the same question again and I presume he will give the same answer.

Mr. MacQuarrie: You are quite correct.

Mr. Chairman: He said he would prefer to leave it as is. Is there some other way of putting it?

Mr. MacQuarrie: I could put it this way: what did the people responsible for drafting the legislation mean specifically by "custodial home"?

Mr. Elston: Mr. Chairman, I have to agree with Mr. MacQuarrie that the emphasis should really be on the family unit and anything that we can do to take away the idea that the judge is to focus on what most people would think to be the house--

Interjection: Physical location.

Mr. Elston: --physical location, would be of benefit. I am prepared to move that the subsection be amended.

Mr. Chairman: Mr. Elston moves that clause (f) be amended by deleting the words "home as a."

Are there any other comments on Mr. Elston's amendment?

Mr. MacQuarrie: I had asked the question about what they meant by this custodial home. To me it has a meaning, but--

Hon. G. W. Taylor: I apologize to the committee, but as you perform these little pieces of surgery--

Interjection.

Hon. G. W. Taylor: Yes, Mr. Spensieri, each one requires some discussion with the legislative counsel who have drafted the bill to get all the different pieces that have come in. I can quickly come to a conclusion on my own that I like one word or another, but they have a great of knowledge and have spent a great deal of time receiving many briefs on this over a period of time.

As you do one little piece of surgery here, there are many other sections of the bill that will require the same surgery as we come along because it was not done in each unit on its own, so I will have to ask your forbearance. I know, Mr. Chairman, you want to move this along swiftly, but I beg your indulgence for one moment.

I apologize again. I beg your indulgence too because you are dealing here with new words in the legislative capacity, on which there has been some discussion over a period of time, and you have been developing new definitions. You know the "a house is a home and a home may not be a house" type of thing.

Mr. Breithaupt: Mr. Chairman, perhaps it might be useful while we are waiting to have Mr. Elston put on the record the comments made by the Canadian Bar Association in their brief, so that we will have a current review of just exactly what was said.

Mr. Elston: Actually it is very brief. All they suggested was that there be amendments to clauses (a) and (d). Then they go on to deal with clause (f) and they just recommended rather in isolation that the words "home as a" be deleted from that clause so that we deal--now these are my words--with the family unit rather than the home. They did not have a paragraph on it.

Mr. Renwick: I think I will start and participate again. I thought I was the one who slowed this thing down.

Mr. Elston: It is just a contributing factor--

Mr. Renwick: Not this morning.

Mr. Chairman: Actually, Mr. Renwick, I was almost attempting to cut you off without letting you even move your amendments.

Mr. Renwick: You would never do that.

Mr. Chairman: I might inadvertently do that.

Interjections.

Mr. Laughren: We recognize your desire to deal with it expeditiously, Mr. Chairman.

Mr. Chairman: Thank you very much, Mr. Laughren.

Interjections.

Mr. Chairman: You would not suggest that the chair muzzle a minister of the crown, would you--ever?

Mr. Breithaupt: He would look better with a muzzle on, Mr. Chairman.

Hon. G. W. Taylor: In a moment we will draft another alternative to this, if you could stand that section down.

I apologize to you, but what you are doing is using--even in this--words that are unfamiliar to legislative counsel, words that have not been defined before such as "custodial home." That is new. It is probably used in the social service circles, in the jargon of sociologists. It is probably used in the discussion of the lawyers and clients in the situation, but it is as yet unused in law, as is a family unit, so what you are doing is presenting some difficulty. But I fully understand all those words are coming into the field of family law.

12:30 p.m.

Mr. Elston: It would probably make some sense then to remove "custodial home," if that is a new phrase, and if "family unit" is a new phrase perhaps then we can isolate just one new development, which would be the custodial family unit.

Hon. G. W. Taylor: What we might be proposing so you may put it in your mind and think about it until it comes on paper here for you is that (f) would read: "the permanence and stability of any proposed family unit where the child will reside."

Mr. Breithaupt: You would prefer, then, that we just stand down this subsection until you have given it some thought?

Hon. G. W. Taylor: Yes.

Mr. Chairman: Thank you. That is stood down. Is that satisfactory? Since that is stood down, shall we deal with 24(2)(g)? Are there any comments? Shall clause 24(2)(g) carry? Carried.

Mr. Renwick: I do not think you heard me.

Mr. Chairman: No.

Mr. Renwick: I wanted to draw the attention of the committee to the comment of the Canadian Bar Association, which

simply is that clause (g) should be removed in its entirety so as to prevent the blood relationship from overshadowing the needs of the child and the best interests of the child conception, which is the overriding one, rather than the fortuitous relationship of blood. I wanted to simply put it on the record. I am not moving any amendment.

Mr. Chairman: Fine. I am sorry, I did not hear you at all Mr. Renwick. Are there any other comments with regard to (g)?

Clause 24(2)(g) agreed to.

Mr. Chairman: Mr. Renwick, I believe you had a suggestion for an addition to clause (h).

Mr. Renwick: Yes, sir. I am not going to move it exactly as it is before you in print. Because of the amendment which was made to the opening words of subsection 2, it requires a change.

Mr. Chairman: Mr. Renwick moves that subsection 24(2) be amended by adding thereto the following clause: "(h) The awareness of each of the persons applying for custody of the child of the needs of the child."

Mr. Renwick: The only reason I had to change the wording was that the needs of the child had been picked up in the opening words of subsection 2. So I made the change.

If one searches the clauses from (a) to (g) inclusive, you have no indication of the concept that the person applying should be able to convey to the court the fact that they are aware of the needs of the child. That concept of awareness, that they are aware that this particular child has these particular needs and they are sensitive to those needs--that concept, in my view, does not appear and is not included, for example, in the words "ability and willingness" which we included in clause (d.)

Mr. Eves: Wasn't it the word "disposition" that we just took out?

Mr. Renwick: No. "Disposition" refers to "Yes, I am quite prepared to look after the needs of the child," but that does not answer the question, is the person aware of the needs that he is disposed to look after, or willing to look after? It is a psychological conception of awareness of, of sensitivity towards, the child. I think that the concept is a valuable addition to the kinds of considerations that the court should direct its mind to in making the decision on the application.

I feel that on the other amendments which I moved and which others have moved in connection with this section, there were probably differences in shades of understanding of meanings. This particular amendment is not a question of shades of meaning and concepts at all. It is simply a concept which is totally absent from the itemized list.

I trust that I have expressed it, that it is not the same as "ability," it is not the same as "willingness," it is not the same as "capacity," it is not the same as "disposition." You could have

all of those things and still be insensitive to, or unaware of, the needs. I think anyone who is dealing with that kind of relationship must come to a conclusion about it.

Indeed, in a funny way the court is likely to come to a conclusion about that question without their being aware that that is the specific item that they are addressing their attention to. It is the awareness, the sensitivity, which I think is extremely important that the court have in the legislation before it to direct their attention to that need. I would urge my colleagues to support the amendment.

Mr. Mitchell: Might I ask Mr. Renwick please to repeat the amendment so that we can modify the amendment that he previously proposed and know exactly what is being proposed?

Mr. Renwick: Yes. I dropped the first six words, so the amendment starts with the words "the awareness of each of the persons applying for custody of the child of" and I changed "those needs" to "the needs of the child," which was simply a consequential change. It now reads, "the awareness of each of the persons applying for custody of the child of the needs of the child."

Mr. Chairman: Any other comments with regard to Mr. Renwick's amendment?

Mr. Breithaupt: Mr. Chairman, I would speak in favour of the amendment. As we saw the first amendment made under subsection 24(2), we have had the acceptance on the part of the ministry of adding the words "needs and" to more generally lead the court to the list of the various points which are included in an overview of those items generally referred to as "the needs and circumstances of the child."

Since that item has been generically included before the specific list, it would seem worthwhile for us to have a list of the items included, as broadly based as we can, so that anyone looking over this section would be able to understand the general themes upon which a court makes a decision. We could, of course, not have included any of these items as they now exist between (a) and (g) and we could have left it simply as the subsection 2 of those three lines.

The way we have developed in legislation has been to suggest a general theme that the court should follow, and then through the use of the word "including" we have added a series of particulars so that everyone knows the kinds of things upon which the decision is made and how that decision is reached.

I think it would be worth while to add this final item, because it does seem to complete not only the desire of an individual to provide certain benefits for the child and the court, given the opportunity to look at the variety of circumstances, but more particularly it sets out this theme of awareness.

12:40 p.m.

I was noticing in the changes that had been suggested in

clause (d) that the amendment Mr. Renwick had put forward at that point would have changed the word "provide" to the word "satisfy." That somewhat concerned me because I thought of an individual who was quite willing to provide, but, as probably all of us who have children realize, the desire to provide may not be the same thing as the ability to satisfy the needs of a child. So I preferred, really, not to change that word, because such a change would have made it almost impossible to decide whether the child would be satisfied no matter what the best intentions of the provider might be.

As we get to clause (h) as it is proposed, the expectation of the court, and indeed of the applicant, to be certain that there is an awareness is a most important theme. I would like to see this added because I think it completes the general list of areas of concern at which the court will look under the general heading of looking at the needs and circumstances of the child.

So I support the amendment. I think it would be a useful addition and would be helpful to the student or the legal research person or the interested citizen who looks at the various aspects that the court is more particularly to look at under the general heading of looking at the needs and circumstances of the child.

Mr. Mitchell: Mr. Chairman, I do not know whether the minister and his staff have completed their drafting of the amendment for the previous section, which we stood down.

In what is being proposed here in the new section and the change I want to have the benefit of the minister and his staff with regard to the added clause. It does not seem to me to be one that would cause any great degree of difficulty; in fact, I think Mr. Breithaupt has probably made some very good points. None the less, has the minister got the proposed change in front of him? Can he comment on it?

Hon. G. W. Taylor: Mr. Mitchell, on the particular section, as Mr. Breithaupt has indicated, we can include it as another one of those items to look at. If the legislative staff of the Ministry of the Attorney General consider that the content of it is superfluous, that it is already in there in the other items which a person deciding on it would have already looked at, it is the awareness of the needs of the child of each of the persons applying for custody.

I would submit that when you look first of all at the general section, needs and circumstances, the other ones are listed here. When we go back to the one we just amended, clause (d), the willingness "of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child," anyone who is making the application and the person who is going to decide the ability of that person applying have already addressed their minds to those situations where the person must be aware of the needs of that child.

Mr. Breithaupt: Except I think, Mr. Minister, that the awareness theme comes in in clause (d), in effect.

Hon. G. W. Taylor: Clause (d), where the person has to

show the ability and the willingness, and those items are set out there, at least the general items of what a person applying for custody will have to address his mind to, such as education, necessities of life and special needs. When you get down to this does it mean that the judge then has to apply the awareness of each of the persons applying of the needs of the child?

You have the general capacity. Surely a person hearing the application will get down, knowing that there are general headings, to some of the particular ones, to draw to the attention of the person applying: "By the way, do you know that this individual has special needs, that the child is a diabetic? Can you care for that person who is a diabetic? Do you have any aversion to applying needles?"

Interjection.

Hon. G. W. Taylor: I am trying to give you simple examples that may occur.

Mr. Breithaupt: "Are you aware of what has to be attended to with respect to that medical requirement?"

Hon. G. W. Taylor: And that the feature, although it adds in another item for the judge to apply, bring it to the attention of the judge, would you apply your mind to the awareness of each of the persons? I think one has to give credit to our bench, to those hearing these, that it would be natural that they would apply those items before they made a decision.

Mr. Renwick: I do not have any difficulty in accepting what the minister says in the context in which he applied it in clause (d), but clause (d) is a specialized instance of what I am talking about. The term "the needs" that we introduced into the opening clause of subsection 24(2) is not qualified by the word "special."

The context of clause (d) is very limited. I tried a little earlier to broaden it and I recognize the merit of what my colleague said about the word "satisfy" as distinct from the word "provide." But I had tried to broaden clause (d) in the two aspects. The one has been generally accepted--that is, the ability and willingness; the reference to the needs of the child, including the provision of guidance and education and necessities of life and special needs was connoted in mind.

But that clause relates to special needs of the child and does not connote the question of sensitivity. A diabetic child has a very special need. It would be quite obvious if that were a matter before the court that the court would have to find that the person was aware of that need, but the phrase "the needs of the child" is not limited to special needs.

You do find, at least I believe you find, people who are sufficiently obtuse that they can have all of the ability and willingness to provide for the items listed in (d), but it would all be dependent on whether or not in the first instance, and as the underlying factor in relation of it, they were aware.

Is this person a person who has that quality of awareness or sensitivity to children and their needs in such a way that he can fulfil the role? Not that they are going to say, of course, if a child is diabetic, "Yes, I am aware of that and, yes, I will look after that special need."

I would urge that the additional conception be added. It would be most helpful, I believe, to a court.

Mr. Chairman: Are there any other comments on Mr. Renwick's amendment?

All those in favour of Mr. Renwick's amendment will please raise their hands.

All those opposed to Mr. Renwick's amendment will please raise their hands.

It is a tie vote. The chair, by precedent, votes against the motion so as to retain the status quo.

Motion negatived.

12:50 p.m.

Mr. Chairman: Are we prepared, Mr. Minister, to deal with the portion that was stood down? We are now dealing with clause (f).

Mr. Elston: Mr. Chairman, I am going to withdraw my amendments so that we can propose a reworded version.

Mr. Chairman: Mr. Elston has withdrawn his amendments.

Hon. G. W. Taylor: Mr. Chairman, I have received from legislative counsel and the staff of the Ministry of the Attorney General, a suggested amendment. I offer it to one of the members of the committee to propose as an amendment.

Mr. Renwick: Why do we not do the courtesy of letting Mr. Elston move it?

Hon. G. W. Taylor: If we hit a tie vote, you might have some difficulty with that, Mr. Renwick. You wouldn't want to change the precedent.

Mr. Breithaupt: Perhaps we could run the risk this time, Mr. Chairman.

Mr. Chairman: Mr. Elston moves that clause 24(2)(f) of the act as set out in section 1 of the act be deleted and the following be substituted therefor: "(f) The permanence and stability of the family unit with whom it is proposed that the child will live."

Mr. Mitchell: Could that be repeated slowly please? I would like to get the amendment correctly.

Mr. Elston: "The permanence and stability of the family

unit with whom it is proposed that the child will live."

Mr. Mitchell: Thank you.

Mr. Breithaupt: I suppose the only comment I might make, Mr. Chairman, is why would it not simply say "a family unit where the child will live"?

Mr. Elston: --physical locations. We are going to stay away from that.

Mr. Breithaupt: You are looking at the broader view?

Mr. Elston: Yes.

Hon. G. W. Taylor: The process, Mr. Breithaupt, is to have avoid the feature of it being a physical unit that the previous language seemed to describe. The discussions have been to remove it, and even bearing back to the suggestion that Mr. Renwick made for environment as compared to physical unit. This is to get away from somebody having to say, "That is a very fine address you live at, but I prefer the address of so-and-so." All the drafting was done in regard to the recommendation of getting an atmosphere.

Mr. Chairman: Are there any other comments with regard to the amendment of Mr. Elston to clause 24(2)(f)?

Motion agreed to.

Hon. G. W. Taylor: Mr. Chairman, since in clause 24(2)(a)(d) we changed the word "capacity" to "ability," I would ask someone to move an amendment that the word "capacity" in the second to last line of subsection 24(3) be deleted and that the word "ability" be substituted therefor.

Mr. Chairman: Mr. Stevenson moves that subsection 24(3) be amended by deleting the word "capacity" in the penultimate line and substituting therefor the word "ability."

Mr. Breithaupt: We have that amendment before us. He was going to add the words "and ability." You wish to replace the word "capacity" with the word "ability," as I understand it, because we did it in the previous section.

Mr. Chairman: Mr. Renwick, your comments?

Mr. Renwick: My amendment will not be necessary if the amendment suggested by the minister carries.

In view of Mr. MacQuarrie's amendment to clause 24(2)(d) it would make more sense if subsection 3 read "is relevant to the ability and willingness of the person to act as a parent of the child." It would be consistent with what was above and I think it would make very good sense.

The whole subsection would read, "The past conduct of a person is not relevant to a determination of an application under this part in respect of custody of or access to a child unless the conduct is

relevant to ability and willingness of the person to act as a parent of the child." I am not going to hassle over that argument. I would accept the substitution of the word "ability" for "capacity."

Mr. Breithaupt: I would suggest, Mr. Chairman, that both words be put in in order to be consistent. I think the word "capacity" should come out of there, yes, of course; but I do think that if we make it the "ability and willingness," so that we do follow through what we had in clause 24(2)(d), it would be a better and tidier way of proceeding.

Mr. MacQuarrie : I think the addition of the word "willingness" to the clause is not appropriate. What we are talking about here is past conduct, whether that is a bar to a person's ability to act as a parent. It is not really related to the willingness aspect at all.

Mr. Renwick: I would like to comment on that, Mr. MacQuarrie. Again, it is a question of how long one wants to press on these matters, but what struck me about the need to have the word "willingness" as well as "ability" in is that if the past conduct had been neglect in the sense of unwillingness to look after the child, then it would seem to me that conduct, that neglect, that unwillingness to look after the child, and to ignore the child in the past, is the kind of conduct that would be relevant to whether or not that person should be the parent of the child.

Mr. Breithaupt: That is something separate and different.

Mr. Renwick: That is something separate from the ability of the person to act. My preference is to have the word "capacity" conform with Mr. MacQuarrie's original amendment for the reason which I have stated.

Mr. Chairman: Any other comment? Does that answer what you were going to say, Mr. Elston?

Mr. Elston: I was going to suggest something similar, Mr. Chairman.

Mr. Chairman: Does the ministry have any comments, please?

Hon. G. W. Taylor: Could I have Mr. Shipley comment on that section?

The original intention was to have "capacity" and "ability." Since we had changed "capacity" earlier we had to change "capacity" in this one. As to the adding of the other words, Mr. Shipley might comment.

Mr. Shipley: This provision was included to overcome a specific problem and that was that past conduct was sometimes seen as relevant to the ability of a person to be a parent. I do not think it has ever been called into question in the courts that past conduct reflected on the willingness.

I am sorry I am not very articulate on that, but the problem was that on past conduct I guess the classic case, the case that

went the Supreme Court of Canada, says whether or not a single act of adultery disqualified a person to be a parent. There was no question that if a parent had neglected a child in the past that would be relevant to their ability or willingness to parent. But they have tried to deal with a specific problem and that is as far as we thought we had to go.

Mr. Renwick: Perhaps Mr. Shipley will answer my concern, then. If the past conduct is neglect of the child and the person comes into the court and says "I want to act as the parent of this child," is not the prior conduct of neglect of the child relevant to the application by that person?

1 p.m.

Mr. Shipley: I believe it would be, yes.

Mr. Renwick: It would seem to me, therefore, that that touches upon the question not just of ability but of willingness. A person would have to say: "I have always had the ability to look after a child; it is just that I have neglected to do it. I have now had a change of heart and I want the court to understand that I am very willing now. I have seen the error of my ways and I am now quite willing to do it." But I think we have probably gone on long enough.

Mr. Breithaupt: That is true. Therefore the court should be able to decide on either of those as particular items of past conduct that might be relevant. That is why having both words might be helpful.

Mr. Chairman: We have the motion of Mr. Stevenson. Is Mr. Stevenson going to amend his amendment by adding the words "and willingness," or is he not? The motion is as it is. Does anybody wish to move an amendment to the amendment?

Mr. Renwick: I will move the amendment to the amendment. As I understand it, the amendment before us is to change the word "capacity" to "ability." I would move an amendment to that amendment to add the words "and willingness."

Mr. Mitchell: Mr. Chairman, it being one o'clock, and since it appears that we have included "willingness" elsewhere, perhaps we might give the minister until our next deliberation in order to get back to us about that, and that we defer that vote until the next session.

Mr. Breithaupt: Unless he wants to say yes now. Then we could carry the whole section.

Hon. G. W. Taylor: It appears that a reasonable offer has been made by a member of the committee here, a government member, I might add. It being just past one o'clock I will accept his generous offer.

Mr. Chairman: To do what?

Hon. G. W. Taylor: To look at it.

Mr. Chairman: I have one more thing before we adjourn. We have two private bills in front of us. The clerk requires five days' notice. That means we cannot bring it on next Wednesday. Would it be possible to bring these on--one is a revival; I do not know what the other one is--a week next Wednesday, April 14?

Mr. Renwick: Is it some unbreakable rule that it has to be five days?

Mr. Chairman: Yes, I understand it is. Does that give you enough time? Fine, next Thursday, the very first thing. Thank you.

The committee adjourned at 1:04 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
CHILDREN'S LAW REFORM AMENDMENT ACT
WEDNESDAY, APRIL 7, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Dean, G. H. (Wentworth PC) for Mr. Brandt
Kolyn, A. (Lakeshore PC) for Mr. McLean
Laughren, F. (Nickel Belt NDP) for Mr. Swart

Clerk: Arnott, D.

Staff: Tucker, A. S., Legislative Counsel

From the Ministry of the Attorney General:

Shipley, A. Q., Counsel, Policy Development Division
Taylor, Hon. G. W., Acting Attorney General

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON THE ADMINISTRATION OF JUSTICE

Wednesday, April 7, 1982

The committee met at 10:20 a.m. in committee room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT
(continued)

Resuming consideration of Bill 125, An Act to amend the Children's Law Reform Act.

On section 24:

Mr. Chairman: Gentlemen, shall we commence? I believe we were at section 24(3) when we broke off. If I can refresh my memory, there had been a change from "capacity" to "ability" in line three. Had that been carried? No. We were in a discussion as to whether we would also add the words "and willingness" to the word "ability." Is that not correct? Yes.

I do not recall who was in the midst of speaking. Who would like to lead off on that representation or speak to adding the words "and willingness" or not?

Mr. Renwick: Mr. Chairman, I do not think there was anything particular which has to be added. Everyone is agreed that if we drop the word "capacity" in clause d and substitute for it the word "ability," then in subsection 3 the same change should be made. I think the question was whether or not it should have coupled with it not only the term "ability," but also the term "willingness," to conform with the further language change which was made in clause d. It is my submission, for the reasons we stated the other day, that the subsection would make a great deal more sense, where we are providing for an exception to the past conduct rule, if the word "willingness" was inserted as well as the word "capacity."

Mr. Chairman: Are there other comments with regard to that? Mr. Minister, what is your feeling on the word "willingness" being added, deleting the word "capacity" and replacing it with the words "ability" and "willingness"?

Hon. G. W. Taylor: At this stage, the advisers for the Ministry of the Attorney General feel the use of the word "willingness" is superfluous there and is not necessary, although we had to have the word "capacity" changed to "ability" to coincide with the earlier clause d. Possibly Mr. Shipley might comment further on the background of section 3. There was some comment as to why it was in there, why the whole phrase was in there, which was primarily the previous conduct of a female, although we now have a general section which may be conduct relevant to any person.

Mr. Shipley: Mr. Chairman, I appreciate the desire to have some uniformity between clause d in subsection 2 of section 24 and subsection 3. I think we are talking about slightly different things and that "ability" is the main focus in subsection 3. What we are

trying to do in subsection 3 is to reduce the amount of what is often called mud slinging between the two parents about who did what in the past, using the custody battle or the custody dispute as a public forum for airing all of their dirty linen regardless of what it is about. It is a situation in which the two parents do fight about who was mean to whom, who did what to whom and who was not home on what night. That is the kind of past conduct evidence we are trying to limit by trying to focus the evidence on the ability of the person to be a parent to the child and not on what he did to his spouse in the past.

I think that by adding willingness to the kind of conduct that is relevant will provide them with yet another thing to fight about and to make accusations against each other about, whether or not going away on a business trip or something like that indicated a lack of willingness to be a parent and that sort of thing. They can drag out all those kinds of past perceived injustices.

At the same time, I think that if there was clear evidence that a parent had abandoned that child or any other child in the past, had completely deserted the child, then surely the court would admit that evidence as going to the ability of the person to be a parent. So we would like to keep the kind of evidence before the court in a custody case to evidence going to the parenting ability and limit it that way.

Mr. Spensieri: When we dealt with 24(2)(d) and we substituted the words "ability and willingness," one might have thought that what we were doing was basically exchanging the word "ability" for the word "capacity" and the word "willingness" for the word "disposition," but in looking at the consequential amendments I think Mr. Renwick is perfectly right in his position that we have to be consistent because when one considers past conduct, capacity is one thing.

Capacity could mean financial ability, for instance. Willingness could be shown simply by the fact that the person is there making the application, so obviously if he is there making the application he is willing. But what the court has to determine is the bona fide of the willingness. It seems to me that if we do insert the double test, the capacity or the ability and the willingness or the inclination, then we are creating a more perfect test and one which, albeit, will require more evidence and then will require more opportunity for presenting evidence, but which I think ultimately will result in a better airing of the issues.

Certainly one cannot say that ability and inclination or disposition or willingness are synonymous. They obviously are not. One may have financial capacity, parental capacity, all kinds of cultural and preparation in terms of being suitable, but the willingness or the inclination or the disposition has to be separately tested, and it is a valid test. So we should include it and be consistent.

Mr. Mitchell: I just wanted to refresh this in my memory. If I recall the discussions correctly, the change proposed by the minister was simply to change "capacity" to "ability" of the person to act as the parent of a child.

Mr. Chairman: No. Mr. Stevenson moved an amendment changing the word "capacity" to "ability." Then Mr. Renwick moved an amendment to that amendment asking that the words "and willingness" be added after the word "ability."

Mr. Mitchell: Right. Let me go back, Mr. Chairman. It is my understanding "ability" meets with the ministry's position on it. It is the "willingness" that they feel will create some problems in the court, which I somehow have a little difficulty in understanding.

Hon. G. W. Taylor: The feature was that when the statute was drafted the word "capacity" was used in clause 24(2)(d). That was amended to insert the word "ability," and later on in that same subsection "disposition" which was used there was substituted by the word "willingness." Naturally, when we changed the word "capacity" to "ability" it had been used in other areas of this act, and the legal advisers to the Ministry of the Attorney General and the legislative draftsmen then brought it to my attention that the word "capacity," which is used in the same manner in clause d, would then have to be changed in subsection 3. But the word "disposition," which was replaced by the word "willingness," was not in that original section and there was no intention to put in "capacity and disposition" in a combined one in subsection 3. Therefore, it was felt at this particular time that "willingness" added nothing further to the section, that only "capacity" was necessary to be exchanged by the word "ability" if we have exchanged it up above.

10:30 a.m.

Mr. MacQuarrie: I have some trouble, quite frankly, seeing the particular application of the word "willingness" to this subsection. Willingness, after all, is a state of mind, a subjective sort of thing. It is something that can possibly change from day to day or week to week. I think a person applying is demonstrating, just by the application, a willingness to look after the child. If by virtue of past conduct a parent has neglected a child or has purposely walked off and left the child by itself for long periods, I think that really goes to ability. It is more an objective sort of thing than willingness. I do not really feel that the word "willingness" adds that much to the section and in fact tends maybe to cloud the whole thing.

Mr. Chairman: Are there any further comments with regard to Mr. Renwick's amendment to Mr. Stevenson's amendment?

Mr. Elston: Just a short statement. I think that by leaving willingness out of there we will force the justices on the bench to use some sort of verbal gymnastics in extrapolating the type of past conduct that they wish to be let in to show whether this person has, for instance, taken care of the child on weekends when the wife has gone out shopping or when the husband has gone away, or whether they can decide if they should also tend to the daily needs of the child or whatever.

I think really what will happen if we do not add the word "willingness" is a combination under this subsection 3 of the two concepts of ability and willingness that we tried to set out earlier into the one heading, and that we will probably see the amendment

which we put into clause d being turned into a one-word type situation where "ability" will become the all-meaning word and "willingness" will then lose any sort of meaning at all in that section. I would prefer to see willingness in there just to maintain the distinct nature of the two-part test that the judge has to look at. It is only from that point of view that I am supporting Mr. Renwick's amendment.

Mr. Spensieri: I would like to pick up just briefly from Mr. MacQuarrie's statement that willingness is a subjective test. I believe that what is intended by this legislation is far from a subjective test. In fact, what the court will be asked to determine is whether the applicant who comes forward has a bona fide or genuine willingness. That is why it is crucial to have evidence. It is not sufficient to simply say that having come forward as an applicant you are willing. The court must determine the bona fides of your total willingness for the future and that is why it would be good to have this two-pronged test here.

Mr. Renwick: If we do not accept the subamendment I proposed, what we are doing is excluding the kind of conduct which is relevant to the willingness of the person to act as a parent of the child because it is not included in the kind of conduct which is relevant to ability of the person to act as a parent of a child. I agree with Mr. Spensieri that it is not a subjective test because what you are talking about is the relevancy of past conduct. There is certainly behaviour of a person which would come under the rubric of the term "conduct" that would be extremely relevant to the court in determining whether it was in the best interests of the child, which is the governing factor in having that particular person appointed as the person having custody. I would urge that the amendment be supported.

Mr. MacQuarrie: To my mind, Mr. Chairman, past conduct has always really gone with the capacity.

Hon. G. W. Taylor: Mr. Chairman, it is difficult, and I do not pretend to be a legislative interpreter, but in the section that we changed it from, the judge looked at the capacity of the person; and then we changed "disposition" to "willingness," and the willingness is to provide the guidance, education, necessities of life and special needs of the children.

When you get down to the subsection we are discussing now, the past conduct is relevant or not relevant to the capacity of the individual but not as to the individual's willingness; so again you have to split the two items you are trying to modify there by the extra words. I would suggest that willingness is not necessary because I do not think the past conduct would be modified precisely, or maybe in no way, by that individual's conduct unless maybe you are going to say, "Here's what what they did in the past; that's their conduct." If they can get that in, it shows there is no willingness. I think, as counsel said, it is a surplus word.

Mr. Renwick: It is an important point. To put it very bluntly, one of the common occurrences in my limited experience, not necessarily personally in the court but in hearing about custody situations and what limited experience I have had in the court, is

that the appearance in the court of the so-called "reformed parent" is a very common factor--"Whatever I have done in the past I have now seen the error of my ways and I want my child and I want the custody of my child." To deprive the court of the capacity to test that willingness and to make a decision either that the reform is not bona fide or wholehearted, or has resulted in the kind of change of heart which is essential, seems to me to be very unwise for this committee simply on the basis that we do not want to promote conflicts between parents.

What we are talking about in this bill, as distinct from the Family Law Reform Act, is the best interests of the child, and I think it would be a serious mistake to deprive the court of the capacity of testing that reform because in many cases it could be that the reform is genuine. In other cases, even if genuine, it is not supported by the kind of emotional, mental and psychological atmosphere that would permit a court to agree to it.

Mr. Chairman: Mr. Minister, do you wish to respond?

Hon. G. W. Taylor: I think I have said most of the words on it that are necessary at this time. I feel that the section stands on its own without the word "willingness".

Mr. Chairman: There being no further discussion, all those in favour of Mr. Renwick's amendment to Mr. Stevenson's amendment, please raise their hands.

All those opposed?

Motion negatived.

10:40 a.m.

Mr. Chairman: Is there any further discussion on Mr. Stevenson's amendment to change the word "capacity" to "ability"? There being no further discussion, all those in favour of Mr. Stevenson's amendment, please raise your hands.

All those opposed?

Motion agreed to.

Mr. Chairman: Is there any other discussion with regard to section 24(3)?

Section 24(3), as amended, agreed to.

Mr. Renwick: Mr. Chairman, I have an amendment to section 24 to add a further subsection.

Mr. Chairman: Mr. Renwick moves that section 24 be amended by adding thereto the following subsection 4: "At any time after the child has attained the age of 16 years, the court may terminate the relationship of the parent to the child when the relationship has broken down because of abuse, neglect, serious family conflict or other sufficient cause and it is in the best interest of the child to do so."

Mr. Chairman: Excuse me just one moment. Is it the understanding of the committee that section 24 is reopened? Correct? Yes.

Mr. Renwick: Mr. Chairman, the reason I move this particular motion is that the reality today is that there are a reasonable number of children over the age of 16 who are on their own in our society for whatever the reasons may be, but many of the reasons have to do with the breakdown of the family relationship. It seems to me that rather than simply saying the child has now reached the age of 16 and it will not be long until he is 18 and nothing will be done about it to clarify the relationship, it would be very wise for us to say to the court that there should be circumstances in which it can consider, in the case of a child over the age of 16, the best interests of that child being served simply by terminating the relationship.

The sections dealing with custody and access in the bill before us always connote the proposition that until the child is of the age of majority somebody should have custody of that child in the legal sense. The whole of the bill is directed to those circumstances and provides in many cases an ultimate contradiction in that while the court must look at the merits of the application on the basis of the best interests of the child, the best interests of a child over the age of 16 may very well simply not be served by granting custody to anyone and by terminating it.

I chose the age of 16 because, regardless of what we have done about the age of majority in the province, 16 is still a recognized school-leaving age. It is a result, at least in part, of the right of the child simply to leave school at that point without being subject to any compulsion which has led to a large number of children, whether they return to the educational system or not, going out and getting a job or trying to earn their living somewhere else or living elsewhere for whatever reasons.

I think there is no merit in the language. If the legislative draftsman wishes to make it more apt and fit it more adequately into the language of the bill, that is a separate and distinct question, but the concept of the proposed amendment is one that I would submit should be seriously considered.

Mr. Chairman: For the non-solicitors on the committee, maybe I should simply say the age of 16 is the point of the grey area where no one really knows what happens while the child is 16 and 17. Lawyers are dealing with that ad infinitum.

Mr. MacQuarrie: Mr. Chairman, while I certainly see the point of Mr. Renwick's amendment, I just wonder, in view of the limbo that exists in the law with respect to children between 16 and 18, whether the whole question should be approached as possibly an individual item. The implications of this amendment and the terms that it would introduce into the bill would have, I think, ramifications in other areas of the law, for instance, torts by the child, the responsibility of parents for the child's torts. This sort of area opens up where now in certain circumstances the parents can still be held liable in that grey area between 16 and 18. If you

sever completely the relationship of the parent to the child by a court order, presumably then you also sever all manner of whatever responsibilities might exist regardless of circumstance.

I think the basic thrust of the amendment is a good one. It is a question really--and this might be the appropriate statute to attack it in--of the status of a child between the ages of 16 and 18 in all respects. That is one area where I think most practitioners experience an awful lot of difficulty in saying what is what and who is who. Maybe Mr. Spensieri or Mr. Elston would like to speak on that.

Mr. Spensieri: It seems to me that the points brought out by the amendment cry out for some kind of solution. When you are talking about abuse, neglect, serious family conflict, you are almost talking about something which is synonymous with the wording used in other statutes, such as "a child in need of protection", etc., under the initial Child Welfare Act. It seems to me that perhaps the point is already covered by those statutes in the sense that where a child is in need of such protection, then the courts can involve the appropriate family, children's services, children's aid societies, etc.

The other difficulty I have is that when you talk about terminating a relationship of parent and child, you may be effectively terminating a whole series or bundles of rights such as inheritance and such as the obligation to be supported and the incidental obligations of parents. It seems to me that you can terminate the unpleasant aspects of parenthood without necessarily terminating the benefits of parenthood. This amendment appears to be a little bit too restrictive and to some extent a little bit too severe in perhaps having unintended results.

11:50 a.m.

While I appreciate the reasons for putting it there in cases of abuse and neglect, et cetera, I cannot really in my own mind fathom all the consequences in terms of property rights and rights to support, etc. Therefore, I would be very cautious in supporting it at this stage.

Mr. Renwick: I accept Mr. Spensieri's criticism of the language. I wanted to put the substance of the point and I may have overstated it. What I am really directed towards in the limitations of this bill is that when the application before the court is in reference to a child who has attained the age of 16 years, then the court may, if it is in the best interests of the child to do so, refuse to make the order. This is what I am talking about. My comment, when I spoke about the language not being appropriate and apt, is to try to keep before the committee the limitations. But I do appreciate Mr. Spensieri's criticism of the term "terminate the relationship of," when what I am simply really talking about is the question that the court may refuse to make the order.

Mr. Elston: I have a question there. If we decide that we are going to have the court in a position that it does not have to make an order as to custody for either one of the parents perhaps, is there an obligation that we place on the judge to make an order for someone to have custody? How do we deal with the 16-year-old issue.

Mr. Renwick: No order.

Mr. Elston: No order whatsoever. I presume that they could probably still do that now. They could refuse the applicant at this point and not make an order. I think the justice has the means at his disposal. The difficulty I would expect is that by the nature of the process there are very few people in the legal profession who would like to see a 16-year-old unattached. Our difficulties go much further than just having the 16-year-old under the guidance of someone. We would also like to be able to go to somebody who has some sort of responsibility for the activities of that 16-year old. There is an ability there which I do not think is ever going to be exercised. I do not think that this amendment would help this out a great deal in some of those other grey areas.

Hon. G. W. Taylor: I was going to comment because the amendment that Mr. Renwick proposes does give some difficulty in that the act is not presently set up in a manner or method where a child can make the application. In this amendment it would appear that possibly the child is the one who is going to have to make the application. In the general context of the legislation it is a parent, a guardian or somebody who is asking for the custody or the access. Also, if you are looking at the content, other than spelling it out as Mr. Renwick has done here in his amendment, if these certain items which he has listed take place--break down, abuse, neglect, serious family conflict--then the court may terminate the relationship.

There are sections already in the act, which we will be coming to--section 29; section 74, subsection 3; section 28(7)--where there are instances where the court, upon application, can vary any existing order. They are general sections so that if any of these items, as listed in Mr. Renwick's amendment, were to come to the attention of the court and the court thought them of a nature, they could vary the order.

One further comment. In section 24(2)(b), in the section we were just dealing with, there is the wording, "the views and preferences of the child where such views and preferences can reasonably be ascertained." The court there can look at them in determining the merits of the application or who may achieve custody or access, and there again we are bringing into it the child's views and preferences. Mr. Renwick's amendment seems to extend to an area that the act has not given consideration to, that in which a child brings forth his own individual application, saying, "I am through with this family." It is not foreseen.

Then we get back to Mr. MacQuarrie's views, and the chairman has remarked on that too, that it is an area throughout the practice of law in this area, throughout all areas of law from the criminal to the Child Welfare Act to custody, etc., that this 16 to 18 is probably the greatest area of fudge and concern, the grey area, as it has been described. We have not got that settled precisely and we may take, as Mr. MacQuarrie has suggested, some greater look at it in the future to determine the best way to resolve the 16-to-18-year-old difficulty for many of our statutes.

Mr. Elston: I wonder about the variation of the order which is coming up. We will likely get there a little bit later, but the child is the one we are looking at and focusing on right here, and he would have to be, I guess, a party to the initial order before he can make an application to vary an order.

Hon. G. W. Taylor: I think, Mr. Elston, you have struck on that. There is the difficulty of Mr. Renwick's amendment; it adds a new focus and a new direction to the legislation entirely.

Mr. Elston: But what I am saying is that even though an application is possible to vary the order, the child may not have the capacity to do it on his own initiative.

Hon. G. W. Taylor: That's correct. It is not in the general tenor of the--

Interjection.

Mr. Elston: But there would not be any prohibition against a grandmother or an aunt or an uncle or some other third party coming in and making a fresh application, I would presume, and that probably would be where relief would be.

Hon. G. W. Taylor: Yes, for the application to vary the order, or some other person--

Mr. Elston: I do not think an application to vary would help anybody who was not a party to the first application.

Hon. G. W. Taylor: You could instigate a fresh action, yes, but I was not sure whether Mr. Renwick's amendment was to provide a child with a fresh application or a child to become a party to an existing order. It could do either one or the other the way the amendment sits.

Mr. Renwick: Could I ask the minister to address his comments to section 28, particularly clause b, where it states that the court to which an application is made "by order may determine any aspect of the incidents of the right to custody or access"? That is quite a substantially different matter from the variation of an order. What do you think the word "determine" means there? Certainly one way it could be read to mean to terminate.

Hon. G. W. Taylor: I have discussed this, and the present feature of the word "determine" is not the added context you have described, that of "termination." It is "determine" in the restricted sense, I guess, of determining the incidents in that they are positive and making them rather than terminating them. Section 28(c) would "make such additional order as the court considers necessary and proper in the circumstances." That would be the variation feature, as well as the others I have mentioned, sections 29 and 74(3).

11 a.m.

Mr. Renwick: In the light of the discussion we have had--and it served the purpose I was anxious to raise--and the remarks of the minister, I am quite content at this point, with the consent of the committee, to withdraw the proposed amendment. I think the point has been recognized and the dimensions of the problem have been clarified.

Hon. G. W. Taylor: I was going to add, Mr. Renwick, that counsel for the ministry has brought my attention to section 66 also, which possibly adds to your comments: "Nothing in this part abrogates the right of a child of 16 or more years of age to withdraw from parental control." So that seems again to reinforce some of the features you have brought to the attention of the committee.

Mr. MacQuarrie: Unless as specified elsewhere in the statute "spouse" or "married" or something like that.

Mr. Chairman: Mr. Renwick having withdrawn his amendment that subsection 24(4) be added, shall we then carry on? The next item I have is Mr. Renwick's motion for a new section, which he stated earlier could go anywhere. That is the one that the court may give directions regarding the representation of the child. I had it in my notes at this point, Mr. Renwick. Is it there that you would wish it or somewhere else?

Mr. Renwick: Thank you for calling that because I think this is as appropriate a place as any to deal with it.

Mr. Chairman: Excuse me, Mr. Renwick. I am reminded I should again call for section 24 as amended.

Section 24, as amended, agreed to.

Mr. Chairman: Mr. Renwick moves that the court may at any time give such directions for the representation of the child as the court considers proper.

Mr. Renwick: This new section would presumably be 24(a), subject to renumbering. I think the only further comment I need to make about it is this quotation from an article by a Mr. Worsfold in the Harvard Educational Review, which I would like to quote because I think it speaks to the concern I have:

"Whenever adults act on behalf of a child, doing for the child what they would wish done for them if they were in the child's place, they do so without any mechanism available for children to question their judgement or dispute the correctness of their decisions. There may be no recourse for the child who feels that decisions are being made wrongly on his behalf.

"This objection is wholly analogous to objections raised to the 'best interests of the child' standard as it is applied to legal proceedings, for instance, where adults often act according to their own conception of the child's best interests without sufficient chance for the children themselves to take issues with this conception or to participate in the decision-making process."

While my amendment does not necessarily speak wholeheartedly to that philosophical justification for children's rights, nevertheless, it does provide a mechanism, if the court so decides, for independent, individual representation of the child before the court in which the decision is being made in the best interests of the child.

Again I would bow to Mr. MacQuarrie, Mr. Spensieri and Mr. Elston on it because I have not been in the family court for a considerable period of time. I have always been concerned about the paternal nature of the so-called judge's role in that he has to take the child aside and have a quiet discussion on what the child thinks about his best interests. That has always been a paternal jurisdiction of the court.

It seems to me that it would be wise for us to say to the court that it may--I emphasize that it is permissive--make certain in these kinds of applications without going the step of making the child a party to the proceedings, but nevertheless, simply to provide that I, as judge, would consider it wise that the child be represented in this court on this application. I would be interested in all my colleagues' comments, but particularly my colleagues at the bar.

Mr. Elston: I think it is a reasonable suggestion to have this placed in the act. I know from recent experience that many judges already have taken the position that where children are not of tender years but are, say, in the early teens and upwards, they prefer there be representation if there is a very hostile action taking place between the parents. I see it as sort of a buffering effect which the legal representative has.

Inasmuch as I support this idea, I still have a concern about the situation where the child, although he is represented, is still unable to deal in any matter whatsoever with an unfavourable result. In that regard you place the legal representative for that child in a very difficult position. He is unable really to do much more than stand up and say, "I had a chat with my client the other day and he has expressed such-and-such." At that point you probably would end up having the judge requesting that the child come to see him as well. My experience so far has been a reluctance on the part of the judge merely to deal with what becomes a hearsay-type of presentation of material by the child's representative.

Maybe it is a good idea that we do put this in front so that every judge has to turn his eye to the question of representation, but I wonder if we should not be seriously considering moving that one step further in certain circumstance so that the child actually does have some legal recourse in situations where he feels aggrieved because those situations do occur. In any event, I support the thrust of this particular section for those reasons.

Mr. Chairman: Are there any other comments?

Mr. MacQuarrie: Mr. Chairman, everyone possibly recognizes the benefit, in certain instances, of the child being represented. A number of questions come up in my mind, and one is the status of the

so-called representative. If the child is small, of tender years and incapable of properly instructing a representative, the representative then would be considered more as a friend of the court than as representing the child. We are into this whole question of at what point--and I am sure it might vary from child to child--is a child able, competently and properly, to instruct a representative.

11:10 a.m.

There is an other thing I wonder about. We heard--I think from some of the delegations--that the capacity in the court to appoint representatives for parties already exists in the Supreme Court and that they have been using some sort of device to permit it to happen in the lower courts. I wondered whether the court may at any time give such directions for the representation of the child as the court considers proper. If the child is 11, 12, 13 or 14 years old and capable, presumably, of instructing counsel and does not necessarily want representation, what happens then? You are presumably going against the interests of the child.

Mr. Elston: He can tell his court-appointed representative that he does not wish to instruct him, that he does not want to talk to him, in which case the guy has to go back and say he cannot get instructions.

Mr. MacQuarrie: We have the court giving the directions as the court considers proper without necessarily the child's wishes being taken into account.

Mr. Elston: But the impact of representation is only as good as the communication between the person who is appointed and the client. It is a terribly difficult situation. Even the lawyer who is now appointed to represent a child is in a difficult position because he has to determine in his own mind that he is getting proper instructions as well.

Mr. MacQuarrie: If he cannot determine that, he is just more or less an adviser to the court rather than to his client or the person he is assisting.

Mr. Elston: That is one of the difficulties they suffer under now, that they become almost just a conduit from child to court.

Mr. MacQuarrie: My basic thought is that everyone appearing in a court with a very significant interest at stake is entitled to representation. That, I think, is the ideal objective.

What I see in this amendment is possible conflict between the court giving directions and the child who is capable of properly instructing counsel as to his or her best interests either not requiring representation or requiring other representation or a different manner of representation than the court might consider proper. This is what I am having some difficulty with.

Mr. Renwick: So far as I understand this bill, and counsel or the minister can correct me on it, the child has no position in

the court at all. Indeed, he is not present; there is no requirement of any kind. In other words, the whole connotation of the bill is that--I do not use this as an invidious term--the child here is somewhat similar to a piece of property; the piece of property is not in the court. The matter in dispute is the child. The child is nothing and has no status of any kind under this bill.

I was taking the most limited, or what in my conception was the most limited, approach to it: that a court should have the elbow-room at least to do something with respect to that child. I was not talking about the child of infant years, or whether the capacity to instruct counsel or otherwise was there; nor was I talking about the wishes of the child in the particular case either to be represented or to not be represented. I was simply trying to give the simplest kind of statement to the court that says to itself, "The best interest of the child is something that I must decide."

Yet the child is in a very real sense precluded. There is no machinery for the child to be getting before the court. There is even no sense that the child will either be in the building, let alone in some sense involved in the proceeding. Indeed, in so far as children of infant years are concerned, the proceeding may very well be going on without the child even knowing that he is the subject of the legal argument.

When you look at it in that sense, and recognizing that courts are, at least in my experience with them, extremely cautious with respect to what they do, it is a positive suggestion at least to say that the court may decide that the child should be represented. I think it is up to the court to exercise its discretion. It has nothing to do with my trying to say that the child should be individually represented.

I know there is a good body of thought that the child should be party to the proceeding and should be properly represented in the traditional way. I am not saying that. I am just saying that the court should say: "I want somebody here who is going to represent the child and I, the court, will express to that person who is going to represent the child in this court why I want the child represented. In other words, I sense in this conflict which is before me that the interests of the child are not being properly presented to me, that I am involved in a conflict between two adults who are fighting over a child. I want somebody to let me have their assessment, on behalf of the child, of what the situation is."

It is in that extremely limited sense that it seemed to me this was an appropriate way to do it. I happen to have at least some sympathy--I do not wholeheartedly adopt the position but I do have some sympathy--for the traditional road that maybe in any of these applications the child should be a party to the application and that traditional representation system follow. I have never thought all through that completely.

It is for the fundamental reason that the child here is an object of a dispute before a court which that court has to resolve; that the child is not represented: that this is no desire to go that route and make the child a party or consult the child or have the

child involved in it at all; that it is simply to be of assistance to the court when you are asking the court to perform--as any judge who is asked to do it will say it is--one of the most difficult decisions that he has to make if he takes the responsibility in any conscientious sense.

Mr. MacQuarrie: Mr. Renwick makes some very interesting points, Mr. Chairman. I was wondering if the ministry had any comments or suggestions.

11:20 a.m.

Hon. G. W. Taylor: This limit Mr. Renwick has put forward now is, I guess, in substance somewhat similar to the ones we had earlier in reviewing the bill as to representation for children. It was felt then that there is the ability to provide representation for a child where the court considers it necessary. I think throughout the bill as it is at present there is added information for the court's assistance so that it can become aware of where that assistance can be provided. I think if you look at section 65 when the court is considering the application, the court, where possible, should take into consideration the views and preferences of the child to the extent that the child is able to express them.

I think that provides adequately for the comments Mr. MacQuarrie has made, that if you were put in a general section as it appears here, you could get situations where a child, unable to give instructions, could be represented. Indeed, you are not obtaining the instructions of the child; you are obtaining instructions and comments more than likely by the person representing the child, be it a lawyer or somebody else.

Mr. Renwick: Where is that?

Hon. G. W. Taylor: Section 65 on page 31 of the act. It indicates that the child is entitled to be advised by and to have his counsel, if any, present during the interview. So there is some consideration given. There may be instances where it can be acknowledged that there might be counsel representing a child in a situation.

Mr. Renwick: I have no problem with that. It does not speak to my point, Mr. Chairman.

Hon. G. W. Taylor: Also complimentary to that is section 24(2)(b), which is the one we have dealt with just recently where the views and preferences of the child can be ascertained. Subsection 30(1) is another section where an application is brought with respect to custody of a child.

Mr. Mitchell: I am sorry, what section?

Hon. G. W. Taylor: Subsection 30(1) says: "The court before which an application is brought in respect of custody of or access to a child, by order, may appoint a person who has a technical or professional skill to assess and report to the court on the needs of the child." There, again, where the court can ascertain that there is something special that the child needs, there is a provision not only to provide counsel but technical and professional skill of a different nature than just strictly counsel to assist the court in determining.

Mr. Renwick: There is no provision for counsel.

Mr. MacQuarrie: If you look at subsection 10 of that section, counsel sort of sneaks in there.

Mr. Elston: It does not mean that there is any requirement for them to look at it. It just says if there is one.

Mr. Mitchell: What is the definition of one with professional skill?

Mr. Elston: It could be a psychologist or social worker, probably a psychologist in most cases.

Mr. Mitchell: It does not say it could not be a lawyer or whatever.

Mr. Elston: Generally speaking though, when you are looking at people who come in to assist the court it is a nonlegal person.

Hon. G. W. Taylor: It could be one or the other, as Mr. Elston has said.

Mr. MacQuarrie: Look at subsection 10 where it says, "counsel, if any, representing the child." There is certainly an implication in that section that under certain circumstances a child could have counsel. Now it is a question of how that counsel is obtained.

Mr. Mitchell: Actually, counsel appears in section 8 as well.

Hon. G. W. Taylor: Continuing on, as well as those two subsections, the members of the committee have suggested subsection 8 and 10 of section 30. There is further assistance provided in subsection 30(2) where an official guardian may cause an investigation to be made where the court may require them to do so. Indeed, we had the official guardian's representatives who were witnesses earlier on in the hearings of this piece of legislation. They indicated to the members at that time where they got involved and their ability to be involved and their capability and capacity to carry out the instructions of a court where so desired.

If you took all of these sections together, the children or a child, whatever the case may be, did have ample opportunity and the court had ample opportunity to provide a great deal of assistance, where necessary, to any child or children appearing before the court where they were part of the formal action.

Mr. MacQuarrie: I have one question. On those subsections 8 and 10, "counsel, if any, representing the child." how did that counsel get into the act?

Mr. Elston: I think they were talking about the Reid and Reid decision, where they used the Judicature Act.

Mr. Spensieri: Did they override the jurisdiction of the court?

Interjection: No.

Mr. Elston: I want to raise a couple of things about the discussion, too, if I might, that developed between the official guardian's representative, Mrs. Purvis, and Mr. Preston and Mr. Davis from the Canadian Bar Association. There was a controversy about the substantive content of the reports and about the ability of the official guardian to adequately present the material because the report actually surrounded the input of both parents rather than a case study. Only in situations where opposition had been expressed by one party or the other did a case worker actually go out to the house, or whatever, of the applicant or did the other parties actually discuss the matter with the parents. There was not really any suggestion, as far as I can see, that there was any amount of time spent with the child by the official guardian.

It seems to me that pointing out that particular section as one of the saving features of the legislation with respect to Mr. Renwick's amendment and its thrust in representation for the child probably does not work out. I appreciate what the Acting Attorney General is telling us, but I think we have to be careful to isolate the idea that Mr. Renwick is putting forward, which is to direct the judge specifically to the matter that he has the authority to make an order as to representation without jumping around the parents and arguing with the court in the name of the Judicature Act.

Hon. G. W. Taylor: I think your comments are well taken. There was some discussion by Mrs. Purvis as to their ability, and there also Mr. Davis mentioned that there are some times when they could be challenged. I think there was some discussion as to whether he often took the opportunity that was available to challenge and cross-examine somebody or, when he prepared the official guardian's report, as to the contents of the official guardian's report. Even though the official guardian can make a report, I think on section 30(1), where the court on an application can provide, it is better that they possibly provide the technical or professional skill as compared to giving somebody the ability to obtain counsel or the court directing that the child should be having a counsel, whereas the court gets its assistance and counsel for the ministry, as I have mentioned, although I know it is not a matter of interpretation in statutes. The major heading is custody and access and assistance to court.

Mr. Elston: That person is working for the court.

Hon. G. W. Taylor: Indeed, but I think one has to say that in providing that assistance it is also working for the solution to the problem and the issue before the court, that of the parents or individuals seeking application, and for the best needs and interests of the child. Indeed, a child of tender years would receive a great deal of assistance and skill probably from somebody technical and professional in another line rather than having a counsel representing the child, whereas in a normal situation of a counsel we know one has to be able to receive instructions generally

to be a counsel to the child. So I think the section is even better than that proposed in Mr. Renwick's amendment.

Mr. Renwick: May I respond to the minister? I would have no problem with what you said if it were not for the extremely nebulous expression in section 30(10) and in section 65, where we talk about "counsel, if any". I ask you specifically what is the process by which the child gets counsel, if any? There is nothing, as I understand it, in the act. I hate having an ambiguous provision such as that brought in as an argument against a very direct statement about the court having the child represented.

11:30 a.m.

Secondly, I agree entirely with what Mr. Elston said about the nature of the official guardian's role. That is a pretty well-established kind of role, as I understand it, and is not an enlargement of the jurisdiction of the official guardian.

Third, with great respect, there are very few people who would read section 30(1) as including lawyers. It may well be from the language that a lawyer has "technical or professional skill." But most people reading that section do not think of it as a legal appointment; most people think of it in relation to counsellors, psychiatrists, family psychologists. With very rare exceptions and with great respect to myself and my colleagues at the bar, few of us have the kinds of skills that relate to what section 30 is about. It is militated against a little bit by the "counsel, if any" part of subsection 10.

I can be quite wrong, in that somewhere in here there is a precise, unambiguous provision which says, "Yes, a child can have counsel." But I want to say to the minister that while he made a very good try, the points that are raised do not address the problem proposed in the amendment.

Hon. G. W. Taylor: Yes, Mr. Renwick. As we have discussed earlier as similar amendments to sections proposed had come forward, it is the feeling of the advisers to the Attorney General that there is provision and the ability of a court to provide for counsel--

Mr. Renwick: Where is it, Mr. Chairman?

Hon. G. W. Taylor: --to somebody in the situation before the court. Similarly, I cannot disagree with your "technical or professional skill." A court may use that exclusively to define somebody other than a lawyer, although I do not think it excludes a counsel or a lawyer.

Mr. Renwick: No, I do not think it excludes a lawyer.

Hon. G. W. Taylor: But I think it would. I think you are coming to the wrong conclusion that it would be somebody other than a lawyer. Indeed, the drafting of the statute is done that way to provide somebody other than a lawyer in the ability to the court, primarily because, as I mentioned earlier, there would be many situations where a lawyer would be probably the least advantageous individual to assist the court in deciding what is best for the needs and circumstances of the child.

I might draw on Mr. Shipley's knowledge to go through the material we went through initially to show the manner and method of where a counsel can be appointed before a court. We had some legal definitions and discussions on that earlier.

Mr. Shipley: When we did discuss this issue in January, we brought to the committee some of the provisions in statutes and rules that have already been passed. The provision in the Judicature Act is used, and there is the provision in the rules of the family court which is quite similar in its wording to the amendment that has been proposed. In addition, one reason that there has not been any specific statement is that there are a wide variety of sources of counsel for children, and one of the most obvious sources is the parents themselves. The parents can retain counsel to represent the child and to do that independently of their own lawyer and themselves. There is a wide range of possibilities for the child to have counsel, and it becomes difficult then to mention anyone specifically. So we say "counsel, if any."

Mr. Renwick: I think that is balderdash, Mr. Chairman, if I may say so.

Mr. Elston: Once you have the parents retaining the lawyer and paying him, you automatically have the feeling that that lawyer is representing the person who has retained him, no matter in whose behalf he should be working.

I think we spent a lot of time on this, and maybe it would serve us if we did get on with the section and on with the voting.

Mr. Chairman: Are there any further comments on Mr. Renwick's moving of a new section? It is unnumbered.

Mr. MacQuarrie: I would like to get the ministry's comments as to how the words "and counsel, if any" got into those two subsections, except as the rules of court provide and as it was done in Reid and Reid and the rest of it. There might be a section in other acts providing for appointment, but in this particular bill we have "and counsel, if any" sneaking in and no sort of earlier provision for their appointment except the wording of section 30(1), which is broad enough possibly to include counsel. But those parties are appointed to assist the court, if I take the main heading of the part as indicative of what the subsequent subsections mean.

Hon. G. W. Taylor: Very briefly on it, Mr. MacQuarrie, as we have discussed earlier, by looking at the different sections in this bill, by looking at any of the other sections, the Supreme Court of Ontario and the other different acts in the province, the judge does have the ability to select or appoint a counsel for a child in one of these applications. That, I think, is the background of why subsections 8 and 10, as I understand it, have the words "and counsel," including mention of the word "parties." Also in explaining that to you, Mr. Shipley has explained how, under all the other pieces of legislation, counsel is available, and there may be situations where the counsel could be retained by the child or somebody else on behalf of the child even though the child is a minor. That is why that is put in there. I will ask Mr. Shipley to comment fully on that to assist you.

Mr. MacQuarrie: I was just wondering if I could pose this question more specifically to Mr. Shipley. Would the section as proposed by Mr. Renwick as a new section be redundant in view of the powers the courts already possess with respect to the appointment of representatives for children in these cases?

Mr. Shipley: I think it would be redundant in certain respects, but it would go much beyond the powers that already exist as well. It covers it in some areas and goes beyond in many other areas.

Mr. MacQuarrie: Would it be undesirable to go beyond the areas at present covered?

11:40 a.m.

Mr. Shipley: I am not in a position to judge the desirability. I can tell what some of the implications might be.

Mr. MacQuarrie: When you are charged with drafting a statute, I assume the desirability of sections would be part of the overall process.

Hon. G. W. Taylor: The Attorney General in designing, drafting and putting forth this particular piece of legislation considered that there was adequate method of obtaining representation for a child which the court had available to it and that no specific section was needed for that.

Mr. MacQuarrie: To an extent that it is redundant and gives broader powers, the people charged for the drafting of the legislation and the Attorney General feel that those extended rights as proposed in Mr. Renwick's motion are unnecessary and undesirable against the background of the statute. Is that the ministry's position?

Hon. G. W. Taylor: You are very astute, Mr. MacQuarrie. That is the ministry's position.

Mr. Spensieri: Mr. Chairman, notwithstanding the ministry's position I would, if I may, end discussion on this section on a very practical note. If we have all of these nebulous, backdoor access routes for counsel--and they are there: the official guardian, the counsel defending the overriding jurisdiction of the court, the Reid and Reid case--you have to understand that all of these situations arise only at a superior level of a court. In other words, in the first instance you have already been through the family court judge.

My concern as a practical matter is that if I could point to a judge and say, "Here is a section right in the statute which says that you, sir, may appoint at this point," then the judge would have a very practical reference point on which to give me my request for the appointment of counsel; whereas all of these other avenues for the introduction of counsel, I would submit to members of this committee, would appear at a much higher and perhaps appellant level of approach.

Therefore, I see this new section as affording a great opportunity for compromise on part III. Members should not really go over it lightly because it is critical that the remedy be received at the very first instance, at the lowest possible court, the least expensive court. It is as comforting as hell to be able to point to a section and say: "There it is. You can do it, your honour. It is right there in black and white."

Mr. MacQuarrie: It is my understanding that power already existed in the Provincial Courts Act.

Hon. G. W. Taylor: That power already exists and is not restricted to some court above the provincial courts.

Mr. Spensieri: Specifically for part III though?

Hon. G. W. Taylor: It is in the Provincial Courts Act in the court custody proceedings in section 36 where it says, "Where the court is satisfied that the interests of a minor or a person of unsound mind are involved in a proceeding, the court may give such directions for representation of the minor or person of unsound mind as the court considers proper." That is there and available.

As to counsel in these matters, I think you must give them credit for knowing that they can, and have the ability to, get representation for a child. I give full credit to our judges in the provincial and family courts that they will know of the ability to appoint counsel where they deem it necessary. It is not, as you might submit, hidden or nebulous. It is there for their attention and knowledge. I dare say most of them have the knowledge and exercise it where they think it is necessary.

Mr. Chairman: Thank you. If there are no further comments, all those in favour of Mr. Renwick's amendment, which adds the new section, please raise your hands.

All those opposed?

Motion negatived.

On section 25:

Mr. Chairman: We are now at section 25, the declining of jurisdiction by a court. Are there any comments?

Mr. Renwick: Yes, Mr. Chairman. I would like the minister's explanation as to how section 25 relates to clause 22(1)(b)(vi). It is just an open question. I do not understand how both of them got into the act.

Hon. G. W. Taylor: I will call upon Mr. Shipley to explain.

Mr. Renwick: I can understand section 25 alone or I can understand 22(b)(vi) alone, but it bothers me a great deal that clause 22(1)(a)--"the child is habitually resident in Ontario at the commencement of the application for the order"--could be overridden by section 25.

Hon. G. W. Taylor: Mr. Shipley could comment on that. When we were dealing with section 22, the amendment we discussed in 22(1)(b)(vi) was one of the items looked at. Mr. Shipley, would you comment upon that?

Mr. Shipley: Section 25 is quite a general section. It refers to a wide number of circumstances under the bill in which a court may have jurisdiction to make a custody order. In one case it may have jurisdiction under section 22 because the child is habitually resident here. It may have jurisdiction under section 43 to supersede an order made outside Ontario, or it may have jurisdiction under section 42 to enforce an order.

It is, I think, quite complementary to the provision in clause 22(1)(b)(vi). It reflects the fact that the court should always have the opportunity to define jurisdiction if it is of the opinion that it is better for the child's case to be dealt with in another jurisdiction. That seems primarily to recognize a position that has been adopted by the courts.

Mr. Renwick: I understand that. My only comment, and I am not going to pursue it any further, is that it perpetuates the confusion between reciprocal courts, which has been the bane of marital relations, custody and access problems. It is very difficult when we are trying to carve out a new road to get rid of the very clauses which have put money in lawyers' pockets at the expense of their clients and failed to achieve adequate resolutions of the problems. It would be my view that if the court has an ultimate jurisdiction to decline, then we should not be reinforcing it by putting it in express words in the statute. It seems to me that the converse argument was put just a little while ago that because it is somewhere else it should not be in this act, and here we are being told we are going to put it in here because they have got it anyway.

11:50 a.m.

Those are the problems that I have with the kind of arbitrary draftsmanship we are faced with in this bill.

Mr. Chairman: I take it those are comments only and that you are not requiring any answer from the Acting Attorney General; is that correct?

Mr. Renwick: Mine were not phrased as a question.

Section 25 agreed to.

On section 26:

Mr. Renwick: Mr. Chairman, all I wish to do is to draw to the attention of the committee the comments of the special committee of the family law section of the bar association dealing with Bill 125. It says: "The committee is of the view that the approach established in section 26 of providing a vehicle for expediting custody actions is both appropriate and necessary. However, in view of the delays that may result in assessments, mediations, etc., a

mandatory six-month limitation period may result in unnecessary additional court appearances and costs. The committee feels that by amending section 26 to provide that any party at any time may, by written request, have the action listed, would both give effect to the intent of the section and make the provision more flexible and appropriate."

I thought there was some merit in the six-month mandatory provision, but I could not understand why before the period of six months either party could not be given the opportunity of requesting that the action be listed. So I do not accept, subject to the minister's comment, the whole of the strictures about the mandatory period of the bar committee. On the other hand, it may have some merit and I would ask for a comment on both the comment of the bar committee and about the suggestion that whether one leaves in the mandatory period or not there be an opportunity for either party at any time to have the action listed by written request.

Hon. G. W. Taylor: It is my understanding, Mr. Renwick, that under the rules they can ask for it to be brought on earlier. The reason for the six-month mandatory period, which I believe has been requested by different organizations, is where somebody institutes the proceedings and then lags.

There has always been a comment that because of overcrowded court calendars or lawyers who maybe are using an overcrowded situation or some other difficulty with, in their words, the system to their advantage, it was preventing or causing some delay in the hearing, which was the ultimate reason for providing these applications. I think the one that was considered by all, where there is a child or children in the proceeding, is that the determination should be done quickly, swiftly and to the best interests of the child and that sometimes delay was not in the best interests of the child.

The six-month provision here was to force those parties to come before the court. It was not put in there to cause extra court hearings or applications but to give the parties a warning or a caution or at least some indication that they had to be before the court within a period of time or the court would commence the proceedings.

Mr. Renwick: I have no further comment.

Section 26 agreed to.

On section 27:

Mr. Renwick: Mr. Chairman, on section 27, again the bar association commented that the provisions of section 27 are similar in scope to those contained in the Family Law Reform Act, 1978. "There have been a number of cases decided, in interpreting this section of that act, which result in confusion as to its application. The committee feels that only if a divorce action includes claims for custody and access should an application under this part be stayed, as there are numerous instances in which the actions can run parallel and be mutually exclusive. This change will avoid unnecessary court applications for leave."

Is there any merit in that submission, Mr. Chairman?

Hon. G. W. Taylor: Perhaps Mr. Shipley would comment on that, Mr. Renwick.

Mr. Shipley: I did have an opportunity to review this with some members of the Canadian Bar Association subsequent to the hearings in January.

Section 27 is there because of some constitutional problems from which we still suffer, where custody orders can be made under the Divorce Act. The problem we get into is that the Canadian Bar Association has proposed that if the divorce petition does not include an application for custody, then the provincial legislation should allow the custody order to be made.

The problem is that if the divorce does not deal with custody, it appears that there is still jurisdiction under the Divorce Act and in the divorce court to make a custody order at some subsequent time which would be paramount and invalidate the provincial order.

So I think it is better, as a matter of policy--except in very extreme circumstances and that is why the provision is there that the court can grant leave to proceed, but otherwise, if there is an application for custody--to stop the proceedings in the family court or under the provincial legislation and direct all the parties to the divorce courts to have the custody order determined there. Otherwise they will always be in jeopardy of having the provincial custody order opened up again. In terms of stability--

Mr. Renwick: Thank you. I understand that explanation.

Mr. Chairman: Are there any other comments on section 27?

Mr. Elston: In any event, I think that if there has been a custody order made under a provincial statute, when the Divorce Act is used by the parties they can, of course, open that order up in terms of making their own order.

I guess that even if we got into a situation where I got leave to proceed from my client under the provincial statute, that at some future time your argument would still apply, even though leave had been granted. I am not sure we are solving the problem that was raised by--I am not sure if it was Mr. Preston or Mr. Davis who oftentimes does not bother raising the custody access matter in his divorce petitions but pursues that separately from the divorce. I guess we will get into that paramountcy argument no matter which way we deal with this question.

Section 27 agreed to.

On sections 28 and 29:

Mr. Chairman: We are into custody and access. Are there any comments with regard to sections 28 and 29?

Mr. Elston: I have a couple. In terms of the content of the orders I made a note when we were talking about how a child might get in for a variation. I suppose it is possible for someone to ask that a judge include in his order that a child may apply at some subsequent time for a variation to the order that was made.

I wondered, in that line, what sort of direction goes out, in terms of a new piece of legislation, when they are introduced to the judiciary through the Attorney General's office. Sorry, I should not say "instructions," but what sort of enlightening material accompanies the new piece of legislation to help the judiciary deal with new matters like this.

12 noon

Hon. G. W. Taylor: Mr. Elston, I do not know specifically; maybe Mr. Shipley does. I do know that from time to time the different judges have their seminars, the same as you have your seminars available to you as a practising lawyer. There are conferences and other notes of instruction. They naturally would receive the new act when and if it is passed. I do not know what further they might receive. Maybe Mr. Shipley knows from past experience what has taken place with other pieces of legislation.

You and I, Mr. Elston, as lawyers know sometimes brochures are done in layman's language and are provided to the practising bar, with comment on them, as well as the new piece of legislation, and generally the different associations provide seminars and conferences and instruction on it.

Mr. MacQuarrie: I understand that the Liberal critic sends out a note and also participates in the continuing education series as a lecturer.

Mr. Elston: Perhaps we could continue with that practice and then there would be fairer treatment of the legislation.

Hon. G. W. Taylor: Mr. Shipley has a little brochure here he might want to comment on.

Mr. Elston: Already prepared?

Mr. Shipley: As a matter of fact, the Canadian Bar Association at its 1982 annual institute on continuing legal education has scheduled a presentation on what you should know about the Children's Law Reform Act.

Mr. Elston: Are you appearing?

Mr. Shipley: No, I am not. Some of the members who appeared as witnesses will be speaking on that and the family court judges have also scheduled seminars on the legislation.

Sections 28 and 29 agreed to.

Mr. MacQuarrie: Mr. Chairman, I wonder if I could ask the indulgence of the committee for an early adjournment today--say now. Some of us, unfortunately, have conflicting schedules and have to

try to be in two places at one time. I wonder if we could adjourn until after routine proceedings on Thursday.

Mr. Elston: We still have a quorum if you want to leave.

Mr. MacQuarrie: It so happens that all of us do.

Mr. Chairman: What are the thoughts of the committee?

Mr. Renwick: I am in complete agreement, but I would have really appreciated it if we could reverse a long-standing bad habit of this committee and start on time if it is possible.

Mr. Mitchell: Touché.

Mr. Laughren: Right on.

Mr. Renwick: We have wasted a lot of time over the years. My colleague had a conflicting engagement. That is a different problem.

Mr. Laughren: When the Premier calls, I go.

Mr. Renwick: I think we should start at 10 a.m. and again, if that silly rule that talks about routine proceedings, that nebulous phrase, instead of orders of the day--

Mr. Chairman: Do you mean immediately after question period?

Mr. Renwick: No. The rules say "after routine proceedings." It should say "after the orders of the day." Then there is a specific occasion where the clerk stands up and calls "orders of the day" and we all know we should go to committee.

My own view is that, even without changing the rules, that is when we should start. When they call "orders of the day" we should come to the committee. No one is expected to be here before that time.

I am not saying you should do that, but I wish, Mr. Chairman, you would consider that and see if we could start at 10 a.m. on the days the House is not sitting. When the House is sitting, we should start immediately following the call for orders of the day.

Mr. Chairman: Mr. Renwick, I am of course subject to the quorum of seven that the standing orders call for.

Mr. Renwick: I am quite prepared to agree to dispense with votes and to proceed as long as there is a representative from each of the parties here.

Mr. Mitchell: Mr. Chairman, know Mr. Renwick and I, and I believe Mr. Elston, were discussing that very point this morning. We recognize that it is inevitable that we are going to get caught up on the phone or some such thing, but I think one thing that has probably been good about this committee is that we have, in fact, in situations such as Mr. Renwick has proposed, said, "Let's get the deliberations under way and we will agree that the rules of the game, if you want to call them that, will be followed."

He also raised another good point. Unfortunately, we have been getting later in starting. I think something you, as chairman, can hopefully ask the House leaders--that way I am not pointing the figure at any one particular party--is to make sure that the message gets through to the committee members that that is part of their duty and that, to make your task easier, they are required to be here.

Mr. Renwick: I would hate to involve the House leaders. That would delay everything. I just thought we could make our own rules here.

Mr. MacQuarrie: I agree with Mr. Renwick's suggestion that the meeting could commence, with no votes taken, if representatives of the three parties were present.

Mr. Elston: Mr. Chairman, I want to agree with those sentiments as expressed. I am certainly not wishing to delay the adjournment any further, but I do want to point out one thing I have been kind of itching to say as we got into section 30 because it reflects on the amendment proposed by Mr. Renwick to subsection 24(3). Subsection 30(1) refers to a report by a professional or technical person of the court on the "ability and willingness of the parties." I thought it might not be a bad place to introduce that when Mr. Renwick's defeated, but timely and very good amendment--

Mr. Mitchell: I believe it puts the minister on notice that, in fact, if that word appears--

Mr. Elston: It should be consistent throughout. Perhaps we could check on that for the opening of the next day, if we are going to be consistent all the way through on what the judge has to--

Mr. Renwick: In the same ecumenical spirit, I am not going to move my amendment on that clause.

Hon. G. W. Taylor: I have already raised that with the counsel to the Ministry of the Attorney General and I hope it is well defined by the time we return here because there is some suggestion that "ability" might not be "capacity" next time.

Mr. Chairman: You can see to section 30 when we commence tomorrow. If we do, if the chairman does have bad eyesight as to a quorum at the commencement, will you please ensure that you can control your own members so they will follow this sort of irregular rule?

Mr. Elston: Eyesight is covered under the fee schedule for OHIP, I think.

Mr. Chairman: Is everyone then in favour of adjourning at this time, to reconvene tomorrow after routine proceedings?

Mr. Renwick: I do not care when we start, but we should start not later than immediately following the calling of the orders of the day. We are getting into a dreadful habit.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHILDREN'S LAW REFORM AMENDMENT ACT

THURSDAY, APRIL 8, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
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Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
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Clerk: Arnott, D.

Staff: Revell, D. L., Legislative Counsel

From the Ministry of the Attorney General:
Shipley, A. Q., Counsel, Policy Development Division
Taylor, Hon. G. W., Acting Attorney General

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, April 8, 1982

The committee met at 3:33 p.m. in room 151.

After other business:

CHILDREN'S LAW REFORM AMENDMENT ACT
(concluded)

Resuming consideration of Bill 125, An Act to amend the Children's Law Reform Act.

On section 30:

Mr. Chairman: Gentlemen, I believe we left off last time at the commencement of section 30, custody and access--assistance to court. We had a brief reference to the word "willingness" in the second last and last lines of subsection 30(1).

Hon. G. W. Taylor: There was a reference to it, yes. We wanted to confirm, too, that "ability" was not going to be changed to "capacity" since we changed "capacity" to "ability".

Mr. Chairman: Since the first amendment following this is in subsection 15, I would like to refer to section 30, subsections 1 to 14 inclusive. Are there any comments?

Mr. Elston: I made the comment the other day that ability and willingness are going to be the subject matter of a report under subsection 30(1) and how that might relate to the amendment that had been proposed by Mr. Renwick in subsection 24(3). It seems to me we should be concerned that we maintain the same language throughout. We did carry the amendment to subsection 24(3). I was wondering in light of the wording under subsection 30(1)--

Mr. Chairman: You are wondering if it should be reopened?

Mr. Elston: I would like some comment on it to make sure that we are actually being consistent in allowing the judge to have made available to himself certain technical information on the ability and willingness of parents who have custody and access when, in fact, we have limited him under certain other sections to deal only with ability as it relates to past conduct.

Hon. G. W. Taylor: When you are talking about subsection 24(3), the word "capacity" was changed by way of amendment to "ability" and the discussion did flow around "ability" and "willingness." I think both legislative counsel and myself answered that the section as it stands with that wording adequately represents the feelings and concerns of the ministry in that it tackles the problem that it is designed to take care of. Wherever else "ability" and "willingness" appear, those two words are satisfactorily contained in the legislation, but "willingness" is

not necessary in subsection 24(3), and the same arguments, discussions and dialogue previously made in retaining it that way apply presently.

3:50 p.m.

Mr. Chairman: May the chair ask in subsection 14 who pays the share of the fees and expenses of a party appointed under subsection 1 who is relieved from responsibility?

Hon. G. W. Taylor: I am informed that consideration was given that if somebody is appointed under subsection 30(1), and subject to subsection 14, the person acting has to act upon consent, although requested by the court or appointed by the court, and at the time of being taken on as a technical person or a person of professional skill the arrangement will be made. I guess there would be some situations where one of the parties may have to bear the costs and there would be other situations where arrangements would be made for costs to be paid or fees to be paid, possibly by the state, but each one would be dealt with on the merits at the time of appointment.

Mr. Mitchell: I am not sure about this since the chairman has raised the question and he has left. The court says, "Recognizing your financial position, you cannot pay." Then the individual who has agreed to take on whatever responsibilities he has taken on, had agreed previously to take them on and has been getting his expenses or whatever covered, suddenly now faces the prospect of no remuneration whatsoever for his duties. This is sometime down the pipe after the arrangement has been made at the court; it could be some period of time. What happens then if the guy says, "Whereas I consented in the beginning, unless my expenses or whatever are continued, I cannot do it"? What does that do to the system?

Hon. G. W. Taylor: If you are looking at the very practical situation of how some people receive money, there would be some situations where they would possibly be government people, so they are taken care of right off. You would be asking for professional skills. Others might be covered by insurance premiums; others might be covered by the present existing OHIP coverage; and for others there would be a specific fee arrangement where the person says, "Yes, I will provide that skill for a particular sum of money."

Mr. Mitchell: That is what I am talking about.

Hon. G. W. Taylor: Who is going to pay that sum of money? That decision would be made at the outset of the appointment and the person consenting to take on the task would make the arrangement with the court at that time. I might be the applicant and I would tell the court: "Yes, I am perfectly willing for you to provide professional skill to see whether I am a good applicant and I merit receiving the custody of these children. I would be willing to undergo any type of psychological tests or any other testing as well, such as discussions with psychiatrists, or any number of situations, and I will pay for those services. Similarly, I may even consent to volunteer to the court considering making this appointment the payment of the opposing situation to have that person assessed."

In that particular situation, naturally you have a professional individual's relationship on the payment of those accounts. But there may be other situations where the court would be able to supply the funds for payment of those professional services as well.

The Vice-Chairman: I guess the question you are asking, Mr. Mitchell, is what happens halfway through if somebody stops paying and somebody stops--

Mr. Mitchell: Yes. The applicant or whoever has agreed to pay the moneys if it is not covered by government legal aid or if it is not covered by the Ontario health insurance plan or if it is not covered by so and so and somewhere. If through no fault of the individuals they are unable at that time to pay, you say they can be relieved of payment. But then who is going to pay them because it is left open here? I think that is the question the chairman was asking.

The Vice-Chairman: I would really be inclined to think it would be a question for the court to decide. You will notice, reading through subsections 3 and 4 of that section, that they deal with the appointment of persons agreed on by the parties, and if the parties do not agree the appointment is by the court. Then comes the question of payment. The judge can say: "Look, after representations have been made by counsel, I don't think Mrs. So-and-So can afford to pay. The costs for this will go against the husband."

Mr. Mitchell: With respect, Mr. Chairman, that is fine if it is at the very beginning. I am not talking about what is happening at the very beginning.

Hon. G. W. Taylor: What you see, Mr. Mitchell, I guess, is probably because you are not familiar with some of the processes of courts--

Mr. Mitchell: That may well be it.

Hon. G. W. Taylor: Usually, in most pieces of litigation, the assessment of costs is one of the last items to be dealt with--who is going to pay the shares of expenses. Very infrequently do you get an assessment where a determination is made as to who is going to pay the costs of items at the commencement.

Mr. Mitchell: I am aware of that in normal court decisions. As I say, the chairman has raised a question that I just seem to have some difficulty with because I am being told, if I hear correctly, that at the time certain people are appointed to do certain things it may be indicated to them that their fees will be covered by whoever. You yourself, Mr. Minister, said that the applicant may say, "I am prepared to pay the fees for psychological testing, whatever it might be." I gathered that this was all arranged at the beginning.

This paragraph says the court may relieve the party of it if he has already committed to pay. Then the court further down the line relieves him of it, but the person has agreed to take on certain responsibilities for a fee. Where does the money come from

then? I regret I am not a lawyer and I do not know the legal system, but when it is raised by a lawyer who is chairman of this committee, then I have to say he has raised a--

Hon. G. W. Taylor: To try to explain the cost systems to you in a normal piece of litigation, sometimes an assessment is made as to sharing the cost between the parties or sometimes, as the words are used, the costs follow the event. Sometimes what is considered the successful party receives a contribution from the unsuccessful party. In section 14 this is designed to provide for some of that situation where the individual might in the normal course of events have to pay some of the other party's expenses. The judge can then make an assessment that he is going to relieve that party of paying those expenses and he may shift it between the parties. It does not mean, as it would indicate here, that to the person being employed the court would say, "By the way, you have just done that for free." That is not at all the intention of this section.

4 p.m.

Mr. Mitchell: Okay. Then perhaps what I am looking for, which it is not necessary to write it here, is that at the termination of whatever, whoever is making the decisions can say, "Well, we relieve so and so of payment; we will direct that the crown pay this cost." Is that what you are telling me?

Hon. G. W. Taylor: No.

Interjection.

Mr. Mitchell: You said they could direct the cost to be apportioned one way or the other.

Hon. G. W. Taylor: But the crown is not a party to this; it is the two applicants. One parent wants the custody of the child and the other parent says, "I am opposed to that and I would prefer to have custody or access to the child." Usually there is a determination as to who might pay those costs at the end of the transaction. Albeit somebody might have thought they were going to be paid by the spouse, by the husband, at the end the judge makes a determination that the other spouse will pick those up.

Mr. Mitchell: Fine. I have one final question. You say the crown is not usually a party. Let's say it is the two parents, one making the application and the other opposing the application. Neither one of them, through circumstances they cannot control, is financially able to do it. It does not reflect on their capabilities, for example, to be responsible for the children, but at the particular time they are unable to pay.

Mr. McLean: Mr. Chairman, why is section 14 in there at all? It would be better if you took it out.

Hon. G. W. Taylor: No. We need that in there in some respects to provide the judge with the information that he can relieve one or another of the parties. Although there are the general rules of assessment of costs and expenses of hearings, it is provided as an indication of what the judge may do.

Mr. McLean: But this is just for a technical or a professional person to assess the needs. You are hiring an outsider. Why should the crown pay for it? They agree on it when they start.

Hon. G. W. Taylor: There would be no representation by the state in these proceedings except in a peripheral way and no way the state would be assessed any costs of a hearing or litigation in this matter in a hearing such as this.

Mr. Elston: I wonder, Mr. Chairman, if I could ask how we come about having this independent person appointed. If we start at the first of the litigation, I suppose it would have to come as an application by one of the parties to have the assistance for the judge. The only time I can think of the judge going for assistance is after he has heard almost all the evidence and he has been unimpressed either way by one or another technical person who may have been put forward by the other parties.

Hon. G. W. Taylor: It could be that way, Mr. Elston, or at the outset of an application for hearing there might be a supplementary motion in the application where one party says, "I want a professional assessment." Maybe the judge orders that if the preliminary motion has sufficient evidence to warrant a judge making a decision at that stage.

Mr. Elston: Do you mean a motion by one of the parties to tell the judge to get a--

Hon. G. W. Taylor: Yes, a motion by one of the parties to seek help. I do not know. You have been in litigation and I have been in litigation and there are many preliminary stages before you get to the hearing and many preliminary applications. Probably the normal course of events would be where the judge might not be able to make a decision after hearing all the information. The process is designed really to have fewer preliminary applications, but it does not prevent one from happening in our rules of practice in the courts. You might be quite correct, that most applications of this nature would be done near the end or halfway into or some portion into the main hearing, where the judge would make a conclusion that he cannot make an assessment without some professional assistance, and then he exercises his ability under section 30.

Interjection.

The Vice-Chairman: It indicates he can make it on the hearing of the application or before the hearing--subsection 2. Mr. Renwick had a comment.

Mr. Renwick: I was just curious about the minister's answer to the question that the court does dispense. Surely the person whom the court has appointed then has a claim against the court for the moneys.

Hon. G. W. Taylor: Pardon me. I did not hear you, Mr. Renwick. I apologize.

Mr. Renwick: If the person is appointed on the initiative of the court, and then if the court decides that one of the parties should be relieved of any part of the burden of that cost, surely the professional appointed would have a claim against the court for the balance. Is that correct?

Hon. G. W. Taylor: There would be situations where the court would be responsible for payment of these sums; there is no doubt on that.

Mr. Renwick: For whatever is done.

Hon. G. W. Taylor: That is one situation. The other one is where the participants, as I indicated, volunteer. But I think on all of them there is a professional-client relationship and a manner and method of payment as compared to what Mr. Mitchell has asked: "What happens if halfway through somebody does not pay?" That becomes a situation to resolve between the professional and the client, as it would be in any normal professional-client relationship. But there would be some situations where the court would say, "I want this advice," and that undoubtedly would be the responsibility of the court. I have not done enough of those. In the other rules of practice, I suspect there may be situations where some of the costs of professionals and maybe the counsel may have those tacked on as a cost of the hearing to the unsuccessful participant. I do not know. I am not familiar with it.

Mr. Renwick: I took subsections 1 to 14 inclusive as referring to the person appointed by the court, and if there was an apportionment of the costs that were recovered against the two parties, fine; if that portion of it was relieved by the court, then in any event the professional would be paid by the court. Subsections 1 to 14 do not deal with anything else. Subsection 15 deals with any other form of professional evidence, which would be entirely a matter for the parties. Am I reading it correctly?

Hon. G. W. Taylor: I do not think you are incorrect in that, Mr. Renwick.

Mr. Renwick: Thank you.

Hon. G. W. Taylor: As I say, in some situations I am sure the court will be responsible for the payment of costs. There are other ones, as Mr. Mitchell has said, in which the parties will be the ones bearing the expense.

Mr. Spensieri: I am going to ask legislative counsel a question. It seems that if you zero in on the language of subsections 12 and 14, subsection 12 says, "The court shall require the parties"--presumably all of the parties before the proceeding, or at least most of the parties. Then subsection 14 says that it "may relieve a party." This would seem to me to indicate that you can only relieve one party but not all of the parties; so there is always someone left to pay, so to speak, because you cannot just keep making individual applications for exemption as a party and end up with no parties left to hold the bag. So the language is sufficiently different to indicate that in subsection 12 the court

may require all of the parties; in subsection 14 it may only relieve one of the parties, always leaving one or more to pay. I wonder if that was intended.

Mr. Renwick: I think you could relieve everybody if you wanted to. That is the way I read it.

Interjection: One at a time?

Mr. Renwick: I would say you could relieve all parties if you wanted to. He could make an apportionment as to what they should pay if they were able, and then he could say, "But neither of you is able, so you do not have to pay anything." That is the way I read it.

Mr. MacQuarrie: Mr. Chairman, in the course of the administration of justice what provision is there for the courts to make payments on account of advisers and the rest whom the courts might select in a certain law suit? I cannot offhand--

Mr. Renwick: You must have a petty cash fund somewhere.

Hon. G. W. Taylor: Yes. Without saying there is a specific fund, there are occurrences where the Attorney General's department, operating the courts, pick up expenses of things. It is not unusual.

4:10 p.m.

Mr. MacQuarrie: I cannot particularly recall any instance of that; that is why I asked the question.

Hon. G. W. Taylor: I can, and I can around here. I cannot think of a particular one but there are occasions, Mr. MacQuarrie, where the costs of items have come back to be paid out of the Attorney General's funds.

Mr. MacQuarrie: In a civil suit?

Mr. Revell: I can recall several years ago Mr. Justice Haines had expert assistance in a Ford Motor Co. case that wound up in the Court of Appeal, but I do not know where the funds for that would have come from. It is certainly authorized for him to retain an expert assistant.

Hon. G. W. Taylor: There is, in the civil rules of practice, that ability. I am sure, as in this case, as in the civil rules of practice, there are different ways of assessing those costs either on to the parties or into the Attorney General's costing of operation of courts. It is rarified, as you can see from the people around here.

It is an answer that there are many possibilities and judges in the courts have great powers. You have asked a specific question that, as you can see from all the people around the table who are giving you general answers, Mr. Mitchell, is a rare occurrence.

Mr. Mitchell: I pursued the matter on behalf of the chairman who had to leave, Mr. Minister, but it did present an interesting question to myself, once he had drawn my attention to

it. From the answers that have been given, although it is not written and cast in stone, it may be seen there are areas to recover these costs. I guess what is implied in here is nobody will really be left carrying the bag.

Hon. G. W. Taylor: No professional? You are worried about professionals?

Mr. Mitchell: I am not worried about the professionals. I am just saying if someone takes on something and agrees that certain costs will be paid, under this it allows people to be relieved from paying it. Somewhere along the line the payment can be made, but we are unable to spell that out specifically in this section.

Subsections 1 to 14, inclusive, agreed to.

Section 30, subsection 15.

Mr. MacQuarrie: Mr. Renwick has a draft amendment there, Mr. Chairman.

Mr. Renwick: No. We had the discussion about all those.

Section 30 agreed to.

Section 31 agreed to.

On section 32:

Mr. Renwick: I do not propose to put my amendment to section 32, Mr. Chairman. We have had the discussion on other sections that have dealt with the concerns and they were not accepted there. I have no reason to believe they would be accepted here.

Mr. Chairman: Are there any other comments with regard to section 32?

Mr. Breithaupt: We would have supported the amendment, Mr. Chairman, as well, in case anyone is generally interested in that observation.

Section 32 agreed to.

Sections 33 to 36, inclusive, agreed to.

On section 37:

Mr. Renwick: We should draw the attention of the committee, without reading the whole of the submission, to the custody access enforcement comments of the committee of the bar association on the bill. There has generally been approval of the bill and I do not pretend to move the qualifying amendments they put. I would like to move two amendments which stand in my name, simply to raise the questions which are put by them.

Mr. Chairman: Mr. Renwick moves that the words "or the Ontario Provincial Police" be inserted after the words "may be" in subsection 2 of section 37.

Mr. Renwick: As I say, I put the amendment to raise the question. Fortunately, we have the appropriate minister with us.

The qualifying words in subsection 37(2) are the words "having jurisdiction" qualifying police officer or police force--"having jurisdiction in any area where it appears to the court that the child may be..."

I have understood that the Ontario Provincial Police, in the general sense of the term, have jurisdiction throughout Ontario. Am I correct, Mr. Solicitor General? I felt it would be appropriate to add the Ontario Provincial Police specifically because it may well be that the court at the time would not have any particular clear indication of the area where it appears that the child may be.

Mr. Mitchell: Are you talking about the last paragraph of that, Mr. Renwick, under clause c?

Mr. Renwick: Yes. "The court by order may direct the sheriff or a police force, or both, having jurisdiction in any area where it appears to the court that the child may be, or the Ontario Provincial Police, to locate, apprehend and deliver the child to the person named in the order."

Mr. Breithaupt: Mr. Chairman, is that not a police force and therefore it would not have to be separately presented?

Mr. Renwick: My question is whether or not the OPP has jurisdiction. That is my problem.

Hon. G. W. Taylor: Yes. In some areas they have jurisdiction, but the reason for the "police force," as such, gives you the scope of the judge and the person hearing it to define both the sheriff, which gets you into a jurisdiction, say, in a county, and the police force, which gets you into a jurisdiction where the police forces know they actually perform the duties.

In the rural areas it is considered the Ontario Provincial Police force; in the urban areas it is the police force; and in regions it is the police force of those areas. So it is going to be (inaudible) sheriff or a police force, or both, having the jurisdiction as the one you would press upon.

Mr. Renwick: That is precisely--

Hon. G. W. Taylor: But in some of the areas it would be unusual, particularly if you use Metropolitan Toronto, for you to find somebody at the Ontario Provincial Police level who would work on these particular orders here in the legislation.

In the areas where they customarily carry out the functions of a police force, yes. But if you were to use Metropolitan Toronto as an example, you have the general headquarters and they would not have the mechanics of doing it. That is why it was left as a police force. It is going to be something that you want to have the mechanics of them doing. In the metropolitan areas here the police force is really just doing criminal investigation and patrolling Highways 401 and 400.

Mr. Breithaupt: Mr. Chairman, surely the OPP has jurisdiction with respect to apprehension and delivery of individuals under a subsection like that, only in an area where by contract it is providing key services--

Mr. Renwick: That is what bothers me.

Mr. Breithaupt: --which would be to certain of the counties or unorganized districts of the province where there is a police force within the community or region. Then that would be the police force which one would expect the court would direct to attend to matters.

I suppose if it was brought to the attention of the court that the location in which the child is presumed to be is an area which is under the policing responsibilities of the Ontario Provincial Police, then that would be--

Hon. G. W. Taylor: That would be the main force.

Mr. Renwick: I agree with that and if that were my concern I would not raise it. I would understand that if the police force which has jurisdiction in the area is by contract the OPP, then that is the police force.

4:20 p.m.

My concern is that we are talking about very serious questions of abduction of children. You do not necessarily know where the hell the child may be or the person who is going to commit the offences that you are trying to stop here, and yet you require the order to specify the persons who can act under the order.

In the greater Metropolitan Toronto area, for example, if you made the mistake of not naming the York police or the Halton police or something like that, nobody has any jurisdiction so you sort of play a game of hopscotch. If somebody has the child and can get out of the particular territorial jurisdiction into the next one, then the order is vitiated.

All I am really trying to say is that there should be some way in which you can avoid that border-hopping operation. That is the concern I have.

I would have a hell of a time going into the court and saying, "You had better name the Metropolitan Toronto police, but you had better also name the regional police in York, you had better name the Halton police," and so on. That was my problem and I was trying to suggest that maybe, with the co-operation among the police forces, if in a given situation the Ontario Provincial Police are named, then they can always call upon the police forces in any particular geographical area to assist them in the execution of the order.

Mr. Breithaupt: It might be useful.

Mr. Renwick: I do not know whether that is the way it would work.

Mr. Brandt: Perhaps I could clarify the point Mr. Renwick has raised.

In a matter of an interjurisdictional problem as it relates to municipal forces, there are a number of areas where a force will cross an imaginary boundary line in a municipal area. I am talking about where there is the complication of nonregional forces, not an OPP area but where there might be a grouping of four or five police departments.

I think of when I sat on the Sarnia Police Commission as an example. Our police force operated quite freely, without restriction, in Sarnia township on occasion. I can think of a fraud charge and I can think of a drug bust where they, in fact, followed the person whom they were attempting to apprehend from one jurisdiction to another without impediment.

In addressing this question to our chief at that time, I raised the question about these jurisdictional matters and the answer that I always got back--perhaps the Solicitor General could comment--is that a policeman in Ontario is a policeman everywhere in Ontario, throughout the province, and he is sworn to the crown. Therefore, even though, if I may use my own area as an example, if the Sarnia force were the one appointed by the courts to carry out these responsibilities, and if in fact the child had been moved to the village of Point Edward, which has its own jurisdiction and its own force, they could continue with that pursuit. That would be my understanding unless the intention here is different.

Mr. Renwick: I think in ordinary police matters I would be inclined to agree in matters of so-called hot pursuit, or whatever the hell you call it, but that is precisely what I do not think would happen here. I think that the moment they came to the border and the child was across the border the order would cease to operate.

I am asking the question; I do not know.

Mr. Chairman: They would thankfully stop.

Mr. Renwick: That is the other problem. It is very difficult, even with a court order, to get the sheriff or a police force to operate in any event. That is another problem because they hate to intervene.

As a matter of fact, there was a case about the Orillia chief of police who was up for contempt of court, along with two constables, on the very issue of a provincial court order related to a family dispute or matter. The question was whether or not they had to do it because the police officer, in all good faith, had simply said, "The normal way for you to do it is to go to the sheriff and if the sheriff wants our help he will call on us for it." The Supreme Court held that that was wrong, but I do not know whether that has altered the practice at all. Mr. MacQuarrie may very well know.

Mr. MacQuarrie: Mr. Renwick leads into some misgivings that I have about the section, and that is the involvement of police forces in matters that are essentially civil in nature, at least at the outset. When we get into questions of abduction and quasi-kidnapping and the rest of it, we might be into a different area of the law, but the common case is one of one parent saying to the other, "I am not going to let you see the children this weekend," or the next weekend or the other weekend, as agreed. The other parent goes running to the court and gets an order, the police officer comes with the parent and knocks at the door and is in the midst of a domestic squabble just on opening the door.

It tends to derogate a bit, I think, from the functions we ordinarily attribute to the police and it also affects somewhat the stature of the police force in the community that it serves in other areas. It is charged to serve and maintain the peace, apprehend lawbreakers and keep good community relations.

The chiefs of police in their briefs on a former bill addressed this point and were very concerned about this, I think with some justification. I put the case in its simplest and most common form and I realize that there are all kinds of variations to that theme; there are some of them where you could quite properly have police involvement. We are starting out with a matter that is essentially civil and are bringing in police forces. The sheriffs ordinarily operate during regular office hours and there is some suggestion of time limit. I propose to introduce an amendment later on to this section to deal with time.

At the same time, I do not know whether the ministry has addressed in sufficient detail the comments the association of chiefs of police--and I am not sure what other associations, possibly the police association as well--has made with respect to this, or whether it has looked at possible breakdown of subsection 2 to keep the police out of the relatively simple domestic disputes that are covered here. Unlawfully withholding the child from a person entitled to access covers a whole wide range of things that every one of us has encountered in practice.

Mr. Mitchell: Who are you suggesting would deal with that?

Mr. MacQuarrie: I am just posing the question; I am not giving you the answer.

Mr. Mitchell: Can you see the local sheriff? I do not even see why he is in there because I see him less equipped to do this sort of job.

Mr. Breithaupt: Remember he is not interpreting an agreement. You have to refer to the fact that the court "by order" may direct the sheriff to do something.

Mr. Mitchell: Yes.

Mr. Breithaupt: I am sure the sheriff does not like having to do it any more than anybody else would.

Mr. Mitchell: All I am suggesting is that he is less equipped, really, to do it.

Mr. Breithaupt: I quite agree.

Mr. Mitchell: I realize the forces themselves do not relish the particular domestic type of altercation, whatever it happens to be, but if a law has been broken, then the ones taxed with upholding the law are the police forces. It has always been my feeling, as has been stated by Andy Brandt, that policemen are policemen for Ontario.

4:30 p.m.

Mr. MacQuarrie: In some of the instances here no law has been broken. The only thing that has been broken is an agreement between two parties by way of separation agreement.

Mr. Mitchell: But that separation agreement has been reached before a court and there is a court order in the matter.

Mr. MacQuarrie: There is the court order that follows the breach of the separation agreement. I just question the propriety in a lot of these instances of having the police involved.

Mr. Elston: Who are you recommending?

Mr. Brandt: He is not recommending. There are a number of us who find that distasteful, as I do. When you look at an alternative method of coping with the problem, there really isn't one.

Mr. Breithaupt: You go back to the situation when bailiffs were often somewhat heavy-handed in their interpretation of a variety of tasks, and that became quite unacceptable. As a result, I think many of the things which bailiffs used to say they could do or would do are matters of the past, fortunately, and a little more regular application of the law now occurs in a more general way.

Mr. Renwick: I recognize the point Mr. MacQuarrie makes and to some extent I share it, but I rely upon the court in a section such as this to be extremely cautious in the exercise of this authority. So I am prepared to accept the court as the body that would be cautious about issuing such an order, but that the severity of the event, particularly in clauses b and c, that is, that the child is likely to be removed from Ontario, would indicate to me that it should not be possible to vitiate the order on this boundary question. I really do not have a problem with the section except that I think the orders would cease entirely at the boundary. I do not think there would be any question whatsoever about that. I think that is a serious flaw that would in many cases mean that this would not be of any great assistance.

It would seem to me that the order of the court should have province-wide force and could be used in such a way that the particular police force that was given the direction in the initial instance could pass on the jurisdiction to any other police force to

make certain that it was an effective order. I do not know how to do it. I do not know what the language should be and I do not know what the question is, but I think it is quite ridiculous to limit it to the geographic boundaries of the jurisdictions of particular police forces in the province.

Mr. Chairman: Could we have a clarification from the Acting Attorney General as to Mr. Renwick's opinion that the jurisdiction of the officers mentioned in the order would not go throughout the entire province of Ontario? Could we have a clarification of that?

Hon. G. W. Taylor: From all the words that have been said by the different members I think you do have one. It is considered, first of all, to be the sheriff or a police force. I think it was hoped by the legislation that the sheriff would be the one that would probably carry it out. Reference to a police force was inserted in there as a general label so that the judge hearing the application can pick the police force for the area where the problem occurs, rather than the Ontario Provincial Police as Mr. Renwick has suggested. Yes, they do have authority throughout Ontario as do the other police officers, and they can carry out and go from area to area where they see fit.

The Ontario Provincial Police have a geographical area of coverage but the numbers of people they exercise their police duties around is small compared to that of the other forces. If we were to name the Ontario Provincial Police force as the overriding police force in these boundary disputes, there would be a great difficulty physically, because of manpower, in their bringing any action if it involved, say, the Metropolitan Toronto area.

Mr. Renwick: I only tossed in the OPP to raise a question.

Hon. G. W. Taylor: You have raised it and I am trying to answer it.

Mr. Renwick: And I think it is legitimate for you to respond that way. It seems to me the point is very simple--the order stops at the boundary according to the existing wording. I do not think that is a wise way to leave it but I do not know the answer to it.

Hon. G. W. Taylor: We have to recognize that there is a great deal of co-operation between the different police forces. I think it was the initial plea of the police forces to not be involved in this at all. Including the words "a police force" would be contrary to what many of the police forces indicated to us in their brief to us, that is, they did not want to get involved in this. I think we have extended their duties in these situations, which are basically a civil matter, although abduction may occur.

I think that specifying the particular police force is probably more advantageous than putting in "Ontario Provincial Police"--although there is a possibility of jurisdictional shopping. I think that is a problem to which the judge and the applicants will have to present themselves at the time. It may be that the judge would name an overriding police force.

I think some of the metropolitan police forces are becoming more equipped to handle the domestic situation. Their officers are receiving more courses in that area because they are more and more becoming involved in what is described as a domestic situation. I think that "police forces"--leaving it the way it is--is better wording.

Mr. Renwick: Mr. Chairman, I withdraw my amendment. I have made the point that the flaw will still exist. If the minister is not prepared to move to solve it, we will just have to take the position that the order of the court will stop at the boundary of the particular jurisdiction in which it is effective and that would be the end of it. I think it deserves some further study by the ministry and, after all, they are the government.

Mr. Chairman: I believe subsection 37(1) requires an amendment. Would someone move that the spelling of "access"--

Mr. Revell: That can be fixed editorially.

Mr. Chairman: Fine, thank you. If there are no other comments, subsections 37(1) and (2) are carried.

Subsections 37(3) to 37(5), inclusive, if there any no comments, shall also carry. We now come to subsection 37(6).

Mr. MacQuarrie: I would like to propose an amendment to subsection 37(6).

Mr. Chairman: Mr. MacQuarrie moves that subsection 37(6) of the act as set out in section 1 of the bill be amended by deleting "sunrise and sunset" in the second line and inserting in lieu thereof "6 a.m. and 9 p.m. standard time."

Mr. McLean: Mr. Chairman, why 6 a.m. to 9 p.m.? Why not eight to nine?

4:40 p.m.

Mr. MacQuarrie: There is a provision in the subsection that the court can authorize entry and search at another hour or, in other words, extend the hours, vary them or change them. The difficulty with the subsection, as it originally stood, was with sunrise and sunset; the hours vary in any geographical location from day to day and they are very difficult to determine unless you check with the official weather people.

Mr. Renwick: At six o'clock in the morning a person vitiates what the purpose sunrise and sunset is, namely, to have it done during daylight hours. If we say six to nine standard time, we are authorizing the police to go in, in this kind of a climate, during darkness.

It is a total change in principle. Whether it is reasonable or not, I do not know. I am curious as to whether standard time is an accurate expression. I have not looked at the Interpretation Act, but is standard time defined somewhere?

Mr. Revell: As a matter of fact, standard time is in the Time Act itself, which provides what is standard time. I think that is the correct reference for standard time, eastern standard time. If we did not say standard time, it would mean standard time, but that meets the problem because very few people are aware that Ontario has the Time Act.

Mr. MacQuarrie: I would be prepared, Mr. Chairman, to consent to a further amendment making it eastern standard time.

Mr. Renwick: Part of the province is in another time zone, is it not?

Mr. Revell: Yes. Standard time then would be better because it would be the standard time in that particular part of the province.

Mr. Breithaupt: I think standard time does have meaning there because you say in accordance with the Time Act.

Mr. Renwick: I have not looked at that for a long time.

Interjections.

Motion agreed to.

Mr. Chairman: Are there any other comments with regard to subsection 37(6)? Mr. Renwick, you had an amendment that that be deleted.

Mr. Renwick: Mr. Chairman, you have the amendment before you. I had thought that matters were sufficiently serious that perhaps we could simply delete the section so that subsection 6 not stand as part of the bill, but I am not going to put the argument on that.

Mr. MacQuarrie: Mr. Chairman, I have a proposed amendment with respect to subsection 37(7).

Mr. Chairman: Mr. MacQuarrie moves that subsection 37(7) of the act, as set out in section 1 of the bill, be deleted and the following substituted therefor: "(7) An order made under subsection 2 shall name a date on which it expires, which shall be a date not later than six months after it is made unless the court is satisfied that a longer period of time is necessary in the circumstances."

Mr. Breithaupt: Mr. Chairman, I wonder if "unless" and the words which follow it would not be better served if you left in the phrase as it appears now in subsection 7, "unless the order specifically provides otherwise." It seems to me to be a neater wording than the amended part that is being proposed.

Hon. G. W. Taylor: When the bill was before the committee previously the Canadian Bar Association made some representations as to the style of wording in conjunction with them, legislative counsel and the counsel for the Ministry of the Attorney General. This wording, as prepared by the amendment of Mr. MacQuarrie, was considered a wording that was superior to the present wording which

the different representations said would give some difficulty to interpretation.

I cannot totally disagree with your observations. As with many of the amendments that have been coming along, the wording could be in many forms and much the same meaning arrived at.

Section 37, as amended, agreed to.

Mr. Chairman: There is a nice easy place to stop. Are there any comments on sections 38 to 47 inclusive?

Mr. Breithaupt: I just meant the whole section was--
Interjections.

Mr. Breithaupt: Nice try.

Section 38 agreed to.

Mr. Chairman: I did not see Mr. Renwick's amendment.

Mr. Renwick: I am not going to place the amendment in section 39, Mr. Chairman.

Section 39 agreed to.

On section 40:

Mr. Renwick: Mr. Chairman, on section 40, if I may, I have no recollection of ever having seen such a provision anywhere. I may be quite wrong; it may be in other statutes.

Is there another statute in Ontario that contains the provisions of section 40?

Hon. G. W. Taylor: I am informed that the Family Law Reform Act contains similar wording about jurisdictions. Possibly Mr. Shipley can--

Mr. Renwick: I am talking about previous to the Family Law Reform Act. Traditionally it seems to me it is brand new language. It also binds the crown.

Hon. G. W. Taylor: Yes. I guess it flows out of the Family Law Reform Act where they were trying to obtain access, garnishee proceedings, the whereabouts of individuals. A lot of the governments had this information but did not provide it; you know, you made your OHIP payment, you paid it but you could not find where the individual was. Where we have those items of information it is available on application to the court.

Mr. Renwick: No further comment, Mr. Chairman.

Section 40 agreed to.

Section 41 agreed to.

On section 42:

4:50 p.m.

Mr. Chairman: Mr. Renwick, you have moved two amendments, one is with regard to subsection 42(1), but also if you will recall, you moved an amendment to subsection 18(1) regarding the definition of the Canadian extraprovincial tribunal. My notation from January was that it was moved to section 42 to be dealt with then, but with the proviso that subsection 18(1) could be reopened.

Mr. Renwick: Your recollection is better than mine.

Mr. Chairman: I wrote it down. I certainly cannot recollect that.

While Mr. Renwick looks at that, are there any other comments with regard to section 42?

Hon. G. W. Taylor: My notes indicate the same thing. Mr. Renwick, your motion is on subsection 18(1) and it relates to section 42; it was a condition that we open section 18 at that time.

Mr. Renwick: May I move my amendment on section 42?

Mr. Chairman: Which one?

Mr. Renwick: The one on subsection 42(1).

Mr. Chairman: Fine.

Mr. Renwick: Is that the appropriate--

Mr. Chairman: I am a little confused on subsection 18(1) and wishing to put it into section 42. It was a definition.

Mr. Breithaupt: Perhaps we could hold that until we see if the amendment to section 42 is accepted. If it is accepted, then it may be necessary for us to return, otherwise it may not be.

Mr. Renwick: That is right. It is strictly a definitional matter.

Mr. Chairman: Then the subsection 42(1) amendment, that word refers to after the word "shall"?

Mr. Renwick: Yes. I think in the printed copy which has been distributed to all members of the committee, in two places the word "care" should be "case."

Mr. Chairman: Mr. Renwick moves that subsection 42(1) be amended by inserting after the word "shall" the words "in the case of the order of a Canadian extraprovincial tribunal, recognize the order and in the case of any other extraprovincial tribunal recognize the order."

Mr. Renwick: The opening sentence of subsection 42(1) would read: "Upon application by any person in whose favour an order

for the custody of or access to a child has been made by an extraprovincial tribunal, a court shall, in the case of the order of a Canadian extraprovincial tribunal, recognize the order and in the case of any other extraprovincial tribunal recognize the order, unless the court is satisfied..."

Mr. Breithaupt: I presume the comment with respect to foreign orders does not refer to those otherwise made within a jurisdiction in Canada?

Mr. Renwick: Yes. The purpose of it was to require the court to give reciprocity to orders of other Canadian jurisdictions in these matters automatically without having to go through the itemization of clauses a to e. The reason simply is that I think that throughout the country at the present time one of the real problems has been the delay caused by the failure to have extraprovincial Canadian orders recognized by another jurisdiction and it is entirely for the purpose of expediting the effective enforcement of those orders.

Otherwise, as you can see, you could call in question any other Canadian extraprovincial order under clauses a, b, c, d and e, and I do not believe that in our country--I am not casting any aspersions on other jurisdictions--at least to the extent that we know it, the courts would exercise care in all of those clauses a to e.

In other words, I cannot conceive, using the example, that the British Columbia court would not have been given reasonable notice of the commencement of the proceedings in which the order was made. I cannot really conceive that public policy in Ontario is different from public policy in other provinces or in the territories on matters similar to this. I suspect that, if there are minor procedural differences, they are not matters of substance, they are matters of procedure.

I think the amendment is self-evident. It needs no further explanation on my part.

Hon. G. W. Taylor: Mr. Chairman and Mr. Renwick, I recognize the feature that Mr. Renwick is trying to put forward in explanation of this subsection 42(1). You combine the reading of that with section 46 of the proposed legislation. Basically there is a presumption in the regularity of an order made by an extraprovincial tribunal, and the definition of an extraprovincial tribunal in this section is considered to be any tribunal outside Ontario as well as outside Canada.

If you meet the items listed in clauses a, b, c and d--and those should be the minimum requirements of any order--there is a presumption of the regularity of that order, and the order will be enforced. It is considered to necessitate not a full-blown, formal, large-scale hearing but one such that this jurisdiction would like to say something had been done of a common nature in these hearings, be it in BC, be it in Alberta and also be it in, maybe, one of the abduction havens, which we have indicated happen to exist throughout the world, so that at least the minimum amount of standard formality is given to that order rather than just fully recognizing an order

dropped on the table, which may be from a jurisdiction that assists its citizens with very little previous judging of the case.

There may be some orders where there might even be an in-term order, so that at least the court is said to look at the tribunal in this area to see whether reasonable notice was given, to see if there was an opportunity to be heard, to see that the law there considers the best interests of the child and also that it is not contrary to public policy in Ontario.

It is also, when you read it with section 46: "For the purposes of an application under this part"--which section 42 is--"a court may take notice, without requiring formal proof, of the law of a jurisdiction outside Ontario and of a decision of an extraprovincial tribunal." It is not required, as you are aware, Mr. Renwick, to bring in expert testimony and witnesses to prove the law of an extraprovincial tribunal. So it is not such a heavy onus of proof that is required but one that we feel is the minimum one could require of an extraprovincial tribunal, that certain minimum standards have been carried out.

I think it gives some safeguard to the jurisdiction and to a court when it is assessing whether it will enforce an extraprovincial order, that there has been some form of sanction to that order of a minimum nature. So that's the background to this bill.

Mr. Renwick: You are sounding more and more like the Premier (Mr. Davis).

5 p.m.

Hon. G. W. Taylor: Don't tell him that. The last time he made recommendations look where it got me.

Interjections.

Mr. Chairman: Are there any other comments on subsection 42(1) in particular? Actually, I'm sorry. It's Mr. Renwick's amendment. Are there any other comments?

Mr. Breithaupt: Perhaps we could, I think (inaudible) with Mr. Renwick's consent, with that explanation--

Mr. Renwick: I will put the amendment today, this particular amendment on that section.

Mr. Breithaupt: You wish to put it?

Mr. Renwick: Yes.

Mr. Chairman: All those in favour of Mr. Renwick's amendment to subsection 42(1) will please raise their hands.

All those opposed will please raise their hands.

It being a tie vote, the chair will follow the precedent of voting against the motion and agreeing with the proposed legislation.

Motion negatived.

Mr. Renwick, your motion on section 42, the 18(1) that was to be moved to section 42, the definition--

Mr. Renwick: I will withdraw that, Mr. Chairman.

Section 42 agreed to.

Section 43 agreed to.

Interjection: --a Renwick amendment.

Mr. Chairman: Yes, I know. Well, he has not read--

Somebody correct me if I am wrong, but am I correct that I see no other presented loose-leaf amendments outside of one that is on section 74(1)?

Mr. Renwick: I would like to move some amendments to the international covenant. That's the schedule to section 47.

Mr. Chairman: And expound at great length upon such amendments?

Mr. Renwick: I understand that we are going to be the first ones to initiate it, so it is obviously open to us to amend it. We might get Allan Leal back to The Hague for a little while.

Sections 44 to 47, inclusive, agreed to.

Mr. Renwick: I am only being so obliging because the Attorney General wrote me a "Dear Jim" letter urging me to co-operate in getting this bill passed. Did you get one too?

Mr. Breithaupt: I got the same letter.

Mr. Renwick: And you got one, did you?

Interjections.

Mr. Chairman: The Progressive Conservative caucus members received the same letter.

Interjections.

Mr. Renwick: You might convey to the Attorney General how co-operative we have been.

Mr. Chairman: Since you received such letter? Was it addressed when he was incapacitated, ill and a plea from his bed, or was this done prior to that?

Interjections.

Mr. Renwick: I am not sure whether mine was a "Dear Mr. Renwick" letter and the "Mr. Renwick" was crossed out and the "Jim" was written in or not. I am not too certain about that, but it was a

very appealing letter. I felt somehow or other that I was permitting more and more children to be abducted all over the world because of my failure to--

Mr. Brandt: I have to tell the members of the committee that the only thing the members on this side of the House received from the Attorney General were autographed pictures of George Taylor. Most of us have sent ours back. So could we, at some opportune moment, read your letter?

Mr. Renwick: Perhaps we can work out an exchange.

Mr. Breithaupt: I thought that was more like it, but you were just told to be here. You did not have to be chatted up.

Interjections.

Mr. Chairman: Gentlemen, shall we carry on with section 63?

Hon. G. W. Taylor: The member for Sarnia (Mr. Brandt) did know of whom the picture was.

Mr. Brandt: Not till recently.

Mr. Mitchell: Did we carry sections 48 and 49?

Mr. Chairman: Yes, those were carried at the very beginning--sections 48 to 62, inclusive--because the Canadian Bar Association real estate people were here. Are there any comments with regard to section 63?

Section 63 agreed to.

Sections 64 to 73, inclusive, agreed to.

On section 74:

Mr. Chairman: I believe there is an amendment.

Mr. MacQuarrie: I have a draft amendment to the section.

Mr. Chairman: Mr. MacQuarrie moves that subsection 74(1) of the act, as set out in section 1 of the bill, be deleted and that subsections 74(2) and 74(3) be renumbered as subsections 74(1) and 74(2).

Are there any comments with regard to Mr. MacQuarrie's amendment?

Mr. Breithaupt: I suppose an explanation might be requested? I presume, Mr. Chairman, that the purpose is that the district in which the child resides might be unknown and therefore the application would be made somewhere else or, indeed, could be made anywhere. Is that the case?

Hon. G. W. Taylor: I will ask Mr. Shipley to explain that particular amendment.

Mr. Shipley: The reason we are dropping this subsection at this point is that the rules committee of both the Supreme Court and the provincial court, family division, have pointed out that this is essentially a procedural matter and is more appropriately dealt with in the rules of procedure than in the bill.

Mr. Breithaupt: In other words, where the parent may reside, or whatever the best reasons may be for that jurisdiction being the one in which the whole matter commences, would be decided upon by the court through application, if necessary.

Mr. Shipley: I am not quite sure that is what they had in mind. I do not want to defer to someone else again but Mr. Beecroft is familiar with it as well. I think it was because they would make a rule that this would be the subject of the rule-making power rather than a statutory power, that is all. They would make a rule providing, essentially, for this.

Mr. Breithaupt: So that it were better to be more generally expressed in the rules and more narrowly in the statute.

Mr. Shipley: Yes.

Mr. Breithaupt: That seems reasonable to me.

Mr. Chairman: Are there any other comments with regard to Mr. MacQuarrie's amendment to section 74(1)?

Motion agreed to.

Section 74, as amended, agreed to.

Sections 75 to 79, inclusive, agreed to.

Mr. Chairman: On complementary amendments: Section 2, and I do mean section 2, because the entire matter we have been dealing with but have been calling section 18 has been basically section 1 of An Act to amend the Children's Law Reform Act.

Section 1, as amended, agreed to.

Sections 2 to 4, inclusive, agreed to.

On section 5:

Mr. Chairman: Mr. MacQuarrie moves that section 5 of the bill be amended by striking out "sections 67 and 68" in the fifth line and inserting in lieu thereof, "sections 60 and 61."

Mr. Breithaupt: I presume that these are the same sections changed only because of numbering.

Section 5, as amended, agreed to.

Sections 6 and 7 agreed to.

Bill 125, as amended, reported.

Mr. Chairman: Thank you, gentlemen.

Mr. Mitchell: Procedurally, then, I guess there is a question with regard to the schedule of this committee. We have agreed to sit next Thursday to hear a private bill. Is there any other business forwarded to this committee at this time?

Mr. Chairman: No, Mr. Mitchell, we have none in front of us since this bill has now been completed. I certainly would not want to call the committee back on Thursday to deal only with a private bill.

Mr. Renwick: If we are in the House I do not mind slipping out for a few minutes to accommodate somebody.

Mr. Mitchell: We have informed Mr. Williams and I think it is only right that we go forward with that now.

Mr. Chairman: We will not be meeting next Wednesday morning unless the House instructs us to do so.

Mr. Elston: We had amendments presented to us with respect to Bill 6. Is there any idea when those may be coming back to us?

Mr. Mitchell: They will not be put back to this committee. They will be put to the committee of the whole House.

Mr. Chairman: We will adjourn until next Thursday afternoon, following orders of the day, to consider Bill Pr 11.

The committee adjourned at 5:15 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL Pr11, 373800 ONTARIO LIMITED ACT
BILL 125, CHILDREN'S LAW REFORM AMENDMENT ACT

THURSDAY, APRIL 15, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Clerk: Arnott, D.

Staff: Revell, D. L., Legislative Counsel

From the Ministry of Consumer and Commercial Relations:
Wells, E. J. K., Director, Company Law Branch, Companies Division

Witnesses:
From 373800 Ontario Ltd.:
Fellowes, T. E. G., Solicitor
Robertson, J., President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, April 15, 1982

The committee met at 3:30 p.m. in room 151.

373800 ONTARIO LIMITED ACT

Consideration of Bill Prll, An Act respecting 373800 Ontario Limited.

Mr. Chairman: Gentlemen, we have a quorum, an actual, true-to-life quorum.

Mr. Brandt: And a gavel.

Mr. Chairman: And a gavel. Shall we commence the consideration of Bill Prll? I believe Mr.--

Interjection: Williams.

Mr. Chairman: Yes. Mr. Williams is here representing--he is not the original proposer; who was that?

Interjection.

Mr. Chairman: I'm sorry. Yours is the one. I am getting you mixed up with--

Mr. Williams: We dealt with Mr. Kennedy's, I think, a week ago, Mr. Chairman. I acted on his behalf.

Mr. Chairman: Right. First, might I have Mr. Revell address the committee on this matter just with some preliminary remarks?

Mr. Revell: Under standing order 101 one of the duties of legislative counsel is to advise the chairman of the committee considering any private bill that is at variance with the usual provisions of private acts on similar subjects and any provisions deserving special attention.

This particular bill, as far as I know, is without precedent. That is not to say that there is anything wrong with the bill; it is to say that it is without precedent. The bill backdates the incorporation of the applicant corporation and that is really the only comment I can make on it for your edification.

I can make, I guess, one other comment. The bill has been circulated to various ministries in the usual way and we have had no adverse comments on the bill from any ministry. Mr. Wells is here from the Ministry of Consumer and Commercial Relations to be available to speak to the bill.

Thank you, Mr. Chairman.

Mr. Chairman: The representative of the companies branch, I believe, has no particular comments on that. Mr. Wells, is that correct?

Mr. Wells: Not at this time, Mr. Chairman.

Mr. Renwick: Have your inquiries elicited any explanation of the mystery?

Mr. Revell: I think that is something that (inaudible) to speak to. I do not understand the reasons for backdating.

Mr. Swart: --I would like to know the kinds of transactions and the volumes of transactions that took place during the period when it was not a corporation.

Mr. Williams: Mr. Chairman, I think we are getting into the merits of the matter without having the parties before us, which is unusual. I think I should be given the opportunity to introduce the bill and the people who will be addressing themselves to the questions and answering the questions that have been posed.

I am pleased to sponsor Bill Prll, An Act respecting 373800 Ontario Limited. The purposes, while they are set out in the preamble, are without precedent, as legal counsel stated, and it is for that very reason that it has been determined by the applicant and his counsel that there is no other route available to them to regularize the situation as it has prevailed with regard to this particular company.

I would like to introduce to the committee Mr. Timothy Fellowes, who is counsel representing the numbered company; and with him is his client, Mr. Johnson, president of the company, along with assistant counsel, Mr. Jim Minns. Perhaps they could come forward and address themselves to the bill and the questions that will be asked by members of committee.

Mr. Chairman: Was the president Robertson or--

Mr. Fellowes: John Robertson.

Mr. Williams: It is Mr. Timothy Fellowes and Mr. John Robertson, spelled with a t, who is the president of the company, and Mr. Fellowes's assistant counsel, Mr. Jim Minns.

Mr. Fellowes: The purpose of the bill the members know. I should explain that what happened was that articles of incorporation were filed with the department on December 19, 1977. As a matter of fact, they had been taken to the department and hand delivered together with a cheque for the incorporation fee. At that time a name was given to the company, 373800 Ontario Ltd., and the company proceeded on information received on the basis of that name to set itself up and carry on business.

The company is a private holding company. It has paid its corporate taxes and its federal taxes back to the date of incorporation. In January 1978 the articles were returned for revisions and at that time it was believed that the original date of

December 19, 1977, was the effective date. The articles were subsequently revised as requested with the assistance of the company's accountants and then refiled.

The articles were issued on February 22, 1979, with the date of February 22, 1979, and it was then that it was realized that this was the date on which the department was holding that the company had been incorporated. At this point it was decided that the department should be advised of the problem that company 373800 had been carrying on its business since December 19, 1977, and when nothing could be done with respect to the change back to the original date on which the company had thought it had been incorporated, it was then decided on advice of counsel that the private bill should be applied for.

The company does not carry on business with the general public, but it has paid taxes throughout. It is a private holding company and if the bill does not go through the only people to be affected will be the Receiver General and the Ministry of Revenue will have to return the taxes that were paid until February 1979.

It is as brief as that and if you have any questions we can answer I would be happy to do so.

Mr. Chairman: Mr. Fellowes, perhaps I did not catch the date. It was December 1977 when the articles were placed in the companies branch and the actual certificate was not issued until February 1979. Now, it was returned, you said, in January 1978?

Mr. Fellowes: That's correct.

Mr. Chairman: Could you expand on what went on between January 1978 and February 1979? That is 13 months.

Mr. Fellowes: That's correct. The revisions were prepared. We had some assistance from, I think, Mr. Wells, suggesting in his letter how the designations might be made. The articles were changed and forwarded to the company's accountants, who looked it over and then sent them back to us; then they were refiled. That took 13 months. I realize that is a long period of time but that is how long it took.

3:40 p.m.

Mr. Renwick: Mr. Chairman, I know Mr. Fellowes and I know he will understand that my questions are not in any sense critical. They are simply for information.

Mr. Fellowes: Yes.

Mr. Renwick: I am interested in a couple of time periods. Why the lengthy delay, from February 22, 1979, to this year, with respect to this application to us to rectify the problem?

Mr. Fellowes: I had first discussed the matter with the corporations branch. We then began to prepare the material, going back as far as 1980, when the original solution had not worked out.

I had never applied for a private bill before so I had to get the information together.

On February 8, 1980, we had requested from Mrs. Jean Lyon the sort of material that would be required and I had been in touch with Mr. Williams to request his advice as to what should be done. The advertising with respect to this matter had started last year, in 1981. We missed one date in the advertising with the Globe and Mail because I misunderstood the dates of publication; I had forgotten whether it was three or four times in the Globe and Mail or three or four times in the Ontario Gazette. The original application was filed last fall.

Mr. Revell was of assistance to me. I was in correspondence with him as long ago as last summer, in August 1981. That is the period of time it took to get here. We were supposed to be here last week but I was on a trial and could not attend.

Mr. Renwick: Sir, have you been the solicitor for the company right from inception?

Mr. Fellowes: Right from the beginning.

Mr. Renwick: The attempted inception of the company?

Mr. Fellowes: The attempted inception.

Mr. Renwick: Right from the beginning.

Mr. Fellowes: That is right.

Mr. Renwick: I take it that this is not in any sense a decision not to proceed and then a decision to proceed, but rather just a straightforward problem of process that you were involved in, as a solicitor, with the Ministry of Consumer and Commercial Relations.

Mr. Fellowes: If it was a straight problem of process I would not say it was the ministry's problem as much as it was our problem. I want to be fair to the ministry. There has now been another change.

Mr. Renwick: What I am trying to say is, it did not involve your clients, it was a question that if everything had gone forward as you planned it would have been incorporated at that time; your instructions were never altered. Is that right?

Mr. Fellowes: That is correct.

Mr. Renwick: The other question is more for the record than anything else. You do not know of anybody who in any way has been harmed or injured by this gap in the period of incorporation?

Mr. Fellowes: No, the company does not deal with the public at all. Isn't that correct, Mr. Robertson?

Mr. Robertson: That is correct.

Mr. Renwick: Throughout the period of time from the date of its incorporation to the present time it has been carrying on its business as if there were no problem with respect to its incorporation, organization and so on.

Mr. Fellowes: That is correct. We have been sending them bills.

Mr. Renwick: This is simply for clarification in my own mind. All of the taxes and other obligations of the company have been performed as if it had been incorporated from December 19, 1977.

Mr. Fellowes: That is correct.

Mr. Renwick: Thank you, Mr. Fellowes.

Mr. Fellowes: I had a letter from the department saying we had to pay the taxes back to 1977 until we have the date straightened out, so we paid the taxes.

Mr. Swart: This is just to amplify my colleague's question. To the best of your knowledge, by retroactively incorporating this company nobody will be gaining anything, nobody will be hurt retroactively. Transactions which have taken place have been in order as if it had been incorporated, and this will change nothing, is that true?

Mr. Fellowes: It will change nothing except that by having the date of December 19, 1977, the original plan of the holding company to be an investment company will be followed through. The accountants advised me that the plan was to use the investment company as a tax advantage to the particular individual shareholders. Other than that, there is no other person affected. If the bill does not go through, the ministry and the Receiver General have to return the funds to us and we will have to go back and unwind all the pieces of paper.

Mr. Swart: There will be no gain or loss to the people involved in the private corporation.

Mr. Fellowes: Not to the private corporation. There probably would be to the shareholders. I am not an accountant and it may be that they might be in a different tax position; which means all the papers will have to be gone over again.

Mr. Chairman: Is it fair to assume that you wish it put back to December 1977 to take some advantage of depreciation write-offs, something in the 1977 calendar year, is that fair to say?

Mr. Fellowes: As I understand it that is so. I do not do tax work, but I understand there is some advantage to having a holding company.

Mr. Chairman: Holding companies are normally for tax purposes.

Mr. Fellowes: So I understand.

Mr. Chairman: So basically it is for tax reasons to move it back the two fiscal years.

Mr. Fellowes: That is why it was set up in the first place.

Mr. Mitchell: If this does not go through, if I heard the gentleman correctly then somebody is faced with paying them back money, our Ministry of Revenue and so on.

Mr. Fellowes: Probably the federal government more than the other, because that was the original proposal.

Mr. Chairman: Are there any other questions? Mr. Renwick, since it is a bit of a precedent to be setting back the date, does this give you any problems? We revive corporations all the time, which is actually bringing into existence something which doesn't exist. I suppose this is a lesser matter, advancing the incorporation date.

Mr. Renwick: I am totally satisfied with the answers I have received to the questions which I put and with the explanation which has been given by Mr. Revell in drawing it to our attention, as well as with the fact that the ministry is not making any comment about it; I know they would make a comment if it was necessary to make any comment.

Sections 1 to 3, inclusive, agreed to.

Bill Pr11 reported.

BILL 125, CHILDREN'S LAW REFORM AMENDMENT ACT

Mr. Chairman: Mr. Renwick handed me, just as this meeting commenced, a letter in a confidential envelope which contains a copy of a letter from the Attorney General (Mr. McMurtry) to Mr. Renwick, dated March 19, 1982, which is a letter much like certain others which perhaps all members of the committee received, asking that the Children's Law Reform Amendment Act, Bill 125, be expedited and that we give all co-operation to expedite passage of it.

3:50 p.m.

The envelope also contains a second document, which is a copy of a letter from Mr. Renwick to Mr. McMurtry, of today's date, April 15, 1982, regarding the same bill. Do you wish me to read that?

Mr. Renwick: Yes, I do, Mr. Chairman.

Mr. Chairman: It is to the Honourable R. Roy McMurtry, Attorney General of Ontario and, as I said, it is regarding Bill 125, the Children's Law Reform Amendment Act.

"I have your note of March 19 and of course delayed responding to you until the bill had been reported out of the standing committee on administration of justice, which took place on Thursday, April 8.

"I may say that there was a rigidity in the performance of

counsel for the ministry which, on occasion, when coupled with the intransigence of your colleagues on the committee, again on occasion, inhibited a rational and reasoned debate.

"I do believe that toward the end there was some improvement.

"I hope that the work of the standing committee on administration of justice, when dealing with nonpartisan matters would understand the wish of all members to participate in the development of the best possible laws on these serious matters.

"Thank you for writing to me. As always, you have my co-operation.

"Yours sincerely,

"James A. Renwick, MPP, Riverdale."

Mr. Mitchell: He wanted it on the record that we are intransigent? I cannot even pronounce it.

Mr. Elston: I think we should point out that Mr. Brandt, the member for Sarnia, is not only intransigent but totally satisfied.

Mr. Brandt: I would just like to say that the area that Mr. Renwick is talking about, where this co-operation sort of oozed out of the committee, was about the time some of us new fellows arrived.

Mr. Chairman: Gentlemen, it appears that we have no further business in front of this committee. I take it we will stand adjourned until the House places some business in front of us. It is possible, I suppose, that the House leader may put something in front of us when he reads things out later this afternoon, but unless you hear something this afternoon it is simply adjourned sine die, as they used to say in division court.

The committee adjourned at 3:51 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CITY OF NORTH YORK ACT
CITY OF WINDSOR ACT

THURSDAY, MAY 6, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Cooke, D. S. (Windsor-Riverside NDP) for Mr. Swart
Newman, B. (Windsor-Walkerville L) for Mr. Spensieri
Piché, R. L. (Cochrane North PC) for Mr. Eves
Wrye, W. M. (Windsor-Sandwich L) for Mr. Elston

Clerk: Arnott, D.

From the Ministry of the Solicitor General:
Ritchie, J. M., Director, Legal Branch

Witnesses:

Dixon, G. M., Assistant Solicitor, City of North York
Wallace, J., City Solicitor, City of Kitchener

From the City of Windsor:

Adamac, J., City Clerk
Jones, Dr. J., Medical Officer of Health
Kellerman, A. S., City Solicitor
McCurdy, H., Alderman

From the Windsor Amusement Association:

Crane, D., Counsel
Simcoe, C., Junior Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, May 6, 1982

The committee met at 3:41 p.m. in room 151.

CITY OF NORTH YORK ACT

Consideration of Bill Pr10, An Act respecting the City of North York.

The Vice-Chairman: I call the meeting to order, gentlemen. There are two substitutions filed. Mr. Newman is substituting for Mr. Spensieri and Mr. Wrye is substituting for Mr. Elston.

We have on our agenda today two private bills, Pr10, An Act respecting the City of North York, and Pr6, An Act respecting the City of Windsor. With respect to Bill Pr10, I understand it is the wish of the applicant that the committee's consideration of this bill be postponed. Is there someone here from North York to speak on that bill and we can get it out of the way?

Mr. Dixon: Yes, Mr. Chairman. My name is George Dixon from the North York legal department. That is correct, we are requesting that the committee's consideration of this bill be deferred for a short while, until some time later this session, if that is possible.

Mr. Breithaupt: All things are possible, it is just a matter of when. Would this be before the end of June or in the fall?

Mr. Dixon: I hope the matter might be deferred, to be considered again some time in the month of June. However, I understand there is some unfavourable ministry comment with respect to parts of the bill and our mayor has some interest in pursuing the possibility of settling some of the difficulties we have with the last few remaining farmers we have in North York. I think the fall certainly would be satisfactory.

The Vice-Chairman: Thank you, Mr. Dixon. What is the committee's pleasure on this? Should we defer it sine die?

Mr. Breithaupt: I think so, Mr. Chairman.

Mr. Renwick: That would be agreeable.

The Vice-Chairman: Agreed. The matter stands adjourned sine die.

Mr. Dixon: Thank you, Mr. Chairman.

CITY OF WINDSOR ACT

Consideration of Bill Pr6, An Act respecting the City of Windsor.

The Vice-Chairman: The next item on the agenda is Bill Pr6, An Act respecting the City of Windsor, put forward by Mr. Cooke. Did you want to speak to it?

Mr. Cooke: Mr. Chairman, might I introduce the Windsor delegation?

The Vice-Chairman: If you would, Mr. Cooke, please.

Mr. Cooke: We have Mr. A. S. Kellerman, the city solicitor; Alderman Howard McCurdy, from ward 3; Mr. John Adamac, the city clerk; and Dr. J. Jones, who is the medical officer of health.

We also have some representatives opposing the bill as well.

Mr. Crane: My name is Douglas Crane. I am counsel for the Windsor Amusement Association. I have my colleague, Mr. Charles Simcoe, with me. We have with us Mr. Steve Perrault, who is a member of the Windsor Amusement Association, Mr. Edward Chudyk and Mr. Dan Masse. I do not intend to call them unless you would like to hear one of them as a representative.

The Vice-Chairman: If it is the committee's pleasure on the bill, we should first hear the applicants speaking in support of the bill. Then those in opposition, if any, can speak. The ministry has some comments on the bill as well.

Perhaps we could start with the city of Windsor and its submissions and then hear from you, Mr. Crane, and Mr. Simcoe later on as the proceedings progress.

Mr. Crane: Thank you, Mr. Chairman.

The Vice-Chairman: We should have extra table space available for note-taking.

Mr. Cooke: Knowing Alderman McCurdy, he may have some comments himself.

Mr. Renwick: I understand the note-taking problem, but it would be more in order if we could have the delegation from the city in support of the bill at the table. I think that would be most helpful.

The Vice-Chairman: That is really the way we should do it. I am sure you gentlemen can find adequate table space somewhere in the room.

Perhaps I could raise, first, a few general questions with the delegation. The bill, in effect, consists of three sections. These deal with three entirely separate matters. Is that correct?

Alderman McCurdy: That is correct, Mr. Chairman. They all deal in essence with the various aspects of licensing legislation.

The Vice-Chairman: We should review it clause by clause.

Mr. Kellerman: Mr. Chairman, I am A. S. Kellerman, city solicitor, and I have with me Alderman McCurdy to my left, Dr. Jones the Essex-Windsor medical officer of health, and to my far left, John Adamac, the city clerk. I also have today Mr. James Wallace, the city solicitor for Kitchener, who is here supporting section 2 of the city of Windsor legislation respecting amusement arcades. I believe his council is vitally interested in the same matter.

With respect to section 1, it deals with lodging homes. It is an extension of the power contained in the Municipal Act which deals with licensing of lodging homes. But because of the problem that the doctor can speak of at this time, the provisions of the Municipal Act do not allow the municipality to create two distinct classes of lodging houses and to authorize that a person who needs care will only go into one class of lodging house, as opposed to a person who does not need that care.

In a clause-by-clause examination, clause 1(a) prohibits a keeper of a lodging house from taking in as a resident someone who has received a certificate of eligibility for extended care service on the theory that that type of individual needs a greater degree of care than is normally granted in a lodging house.

3:50 p.m.

Clause 1(b) provides for where a person who is already in a lodging house receives a certificate of eligibility; in order to ensure that resident is properly cared for the municipality proposes that such an individual be subject to periodic visits by a physician.

Clause 1(c) has the most important powers which the city is requesting, Mr. Chairman. It prohibits the keeper of a lodging house from accepting a person who requires assistance, unless that keeper of a lodging house has obtained a licence for the particular class of lodging house which is designed to ensure a degree of care.

Because of the difficulty of trying to set out the requirements that are necessary for fire protection in a lodging house, clause 1(d) allows the delegation to the chief of the city fire department the power to require and approve the installation of a fire alarm system and emergency lighting in a lodging house.

On page 2, clause 1(e): where a lodging house keeper may be deficient in certain areas under the terms of the bylaw, this allows the committee of council to authorize variances and would be similar to the function of the committee of adjustment with respect to zoning bylaws.

Finally, clause 1(f): the power to establish a minimum room size in a lodging house.

Mr. Chairman, the city of Windsor has given two readings to a bill revising the existing licensing bylaw which could be given third reading upon the passage of this bill.

Briefly, the bylaw which has been given two readings sets up the two classes of lodging houses, a class 1 where the operator provides no assistance to the resident in caring for his health and

for his personal needs including washing, dressing or eating. Class 2 is where the operator provides assistance to the resident in caring for his health and for his personal needs, including washing, dressing or eating.

Part 1 of the bylaw goes on to relate to general conditions relating to the operators of all lodging houses. Paragraph 10 provides a minimum space; for example, no person licensed to operate a lodging house shall permit a person to occupy for sleeping purposes any cellar or any space used as a lobby, hallway, closet, bathroom, etc. or any room having a floor area of less than 7.43 square metres.

The bylaw goes on in part 2, relating to the operators of class 1 lodging houses, and provides extensive requirements respecting fire safety.

Part 3 of the proposed bylaw relates to the operators of class 2 lodging houses, provides for admission and operating procedures such as, "the operator shall institute the following procedures where medication is administered to a resident: "(i) any medication prescribed by a physician must remain in the individual containers bearing the resident's name," and similar matters.

There is a provision there that an employee of a lodging house for the purpose of employing direct care to residents shall have a minimum age of 18 years or over and produce evidence that they have completed grade 10 in an Ontario secondary school.

Then again there are extensive provisions respecting fire safety. It has felt that by bylaw these various provisions could be set out, but in order to provide for other matters which the bylaw does not contain should grant discretion to the fire chief.

It is my view that the existing provisions of the Municipal Act in respect to lodging houses did not extend to authorize the passing of the bylaw in the terms I have given you, Mr. Chairman. I have Alderman McCurdy, who wishes to speak also on that part of the application.

Alderman McCurdy: Mr. Chairman, there has as you know been considerable debate in the House about the disposition of those who have been released into the community as a result of the government policy of deinstitutionalization. There has been considerable concern expressed about the care that has been accorded to people who now find themselves in lodging homes. This concern has been expressed by all sides of the House.

The government, in response to the concerns expressed, indicated that the municipalities should be in every way encouraged to themselves regulate lodging homes in which would be housed people in need of care. This bylaw does not establish new ground in that respect in so far as the city of Hamilton already has a bylaw on the books which corresponds in its application to what we are requesting in clause 1(c).

Among the concerns that have been expressed, both locally and in the House, is the fact that many people who have extended care

certificates do not find beds available in nursing homes and consequently are pushed into lodging homes where they have no care at all. Even with the requirements of this bylaw those persons who have extended care certificates are unlikely to get such care in such places and the operators of such homes should be--and we would ask that this be the case--discouraged by clause 1(a) from housing persons who should be given rather more intensive care in respect to medical personnel and so on.

I think this is tremendously important and this is a particularly notable part of the act, and I think it is one that must be addressed, either by passing legislation for the city of Windsor or by the House doing something about it. I think this is a very significant matter.

I think the statistics are somewhat as follows: that no more than about 60 or 65 per cent of those persons occupying beds in nursing homes in Essex county are holders of extended care certificates. On the other hand, a considerable number find themselves in lodging homes with little care. So I think this is a very important aspect of it.

Obviously clause 1(c) is the very core of the bylaw. It defines a level 2 type lodging home. It seems to me that it follows what the government in its pronouncements on the matter has indicated what the municipalities should be doing and we are here to plead that this legislation be passed so that the end can be accomplished.

With respect to to other matters, these have already been addressed by counsel. I want to say that I think this is a good bylaw, perhaps the best so far in this respect. We would like to have seen legislative action on the provincial level because not all needs are going to be satisfied by the establishment of a level 2 type lodging home. There are aspects of care that we cannot address in such a bylaw, but this is at least a step.

The Vice-Chairman: Thank you. Anyone else wishing to speak in favour of section 1 of the bill? Anyone here opposing section 1 of the bill as drafted and presented?

Mr. Breithaupt: It would be interesting, Mr. Chairman, if we might hear from the parliamentary assistant as to whether this legislation is desirable, and then secondly, of course, whether general legislation is planned which might make particular applications from municipalities redundant and which would have to be dealt with later on if we were to have general legislation.

The Vice-Chairman: Would any member of the committee have any questions that they wanted to address to the delegation?

Mr. Renwick: I have, but I always like to smoke out the parliamentary assistant to find out what his position is, otherwise we might waste a lot of time here.

Mr. Rotenberg: First of all, I just wanted to ask the deputation, they indicate that clause 1(c) is really their key clause. Are you saying in clause 1(c) that any person who requires

any type of care, such as personal needs, would not be able to go into what you may call a class 1 or class 2--I don't know which is which, but the normal lodging house; they would not be able to go into such a lodging house?

4 p.m.

Alderman McCurdy: That is correct. It is designed to provide a level of home care in a lodging type setting. I am sure you are familiar with the rather horrible conditions under which many mentally retarded people, recent psychiatric patients, older people needing care, find themselves when they find themselves in an ordinary lodging home.

Mr. Rotenberg: Let me put the question this way. Let us say someone's Aunt Martha needs a little help every morning getting dressed. There is a lodging house a few blocks away and the lady who runs the lodging house is kind of a sympathetic person but has an ordinary type lodging house.

Why should not someone's Aunt Martha be able to go to that lodging house, where there is a keeper of an ordinary lodging house who can give her that assistance in dressing or washing every morning, which is all she needs? Why should that person not be able to go to that lodging house and have to go to a class 2 lodging house?

Alderman McCurdy: Why should not Aunt Whatever-her-name-is establish herself as a type 2 lodging house if she does? She does not exclude those people who would ordinarily be in a lodging home type 1.

We are concerned about the old lady having the requirement for care in the morning. We have all kinds of institutions advertised in the telephone book as rest homes, indicating that some care is going to be provided in terms of physical standards of the accommodations and in terms of the kind of care they are going to be provided with.

What we are saying is that if anyone wants to put their Aunt Anybody in a lodging home managed by another Aunt Somebody, that lodging home should provide a minimum level of care to guarantee even that minor amount of care that person may require.

Mr. Rotenberg: My problem is if there is not that home with that minimum amount of care available but a normal lodging home is available where the care will be adequate and the MOH is satisfied that that person has adequate care, why should that person not be allowed to go into the ordinary lodging home?

Alderman McCurdy: This is what the bylaw is all about, isn't it, to guarantee in advance that anyone saying they are going to provide a certain level of care will provide it according to certain standards and the MOH would have something to measure it against?

Mr. Rotenberg: Mr. Chairman, Mr. Renwick has said he wanted to smoke me out. I don't think it is necessary, because certainly I have the responsibility of appearing here as the

parliamentary assistant for the Ministry of Municipal Affairs and Housing to indicate the position which I take on behalf of the government.

I must indicate I do have some concerns about the bill, although the motivation for the bill is good and what they want to get done should be done, but I question really whether what they want is being done in a proper manner or in the way it should be done.

First, the idea of having two classes of lodging houses; there is no objection to that. The members of the Legislature and certainly the people in Windsor are familiar with Bill 11, which is now before the Legislature and which I hope will be passed this session, which expands the licensing powers of a municipality.

The municipality, under Bill 11, will be able to establish one or two or three or four classes of lodging houses; they can define them in their licensing bylaws and will be able to license lodging houses and establish them. I have no objection to that part of that request, but that will be handled by general legislation. It will be handled, I hope in this session, by general legislation, as soon as we can get back into legislation and get to the licensing bill.

For the information of the the members of the committee it will be going to the House briefly; it will go to the general government committee for discussion and I hope it will go back to the House this session for passing. So that part of it will be handled.

What really bothers me is that having set up two classes of lodging houses, under the Municipal Act and under that kind of legislation you can permit or prohibit a person with any kind of health problem from going into any lodging house. We do not think that is appropriate under the Municipal Act.

We have a Public Health Act. If a person is in any lodging home or any building and is not getting proper care, I believe the medical officer of health has the right to intervene and to have the person removed from that lodging house.

What the alderman from Windsor says, and I can understand what he is saying, is that he wants really more and better nursing home facilities and more and better--

Alderman McCurdy: Not nursing homes.

Mr. Rotenberg: More and better semi-nursing houses, halfway houses or semi-nursing home facilities.

Interjection.

Mr. Cooke: They are not nursing homes; you should learn the system.

Mr. Rotenberg: He wants to get more homes which he will define as lodging houses which have some form of health care.

Alderman McCurdy: With all due respect, the government has on repeated occasions--three ministers have asserted that the municipalities should be regulating lodging homes to provide a setting for the kind of people who are defined here.

Mr. Rotenberg: That is right. As I am saying, as soon as the licensing bill, Bill 11, is passed, you will be able to do that. That is not the problem. That is not why I would have any objection to this bill. The objection I have to the bill is, as I say, by setting out those situations, under the Municipal Act, not under the Public Health Act, as a municipality you are going to say everybody who has a health problem cannot go into class 1.

Alderman McCurdy: No. We are saying that operators of lodging houses should not hold themselves out as providing treatment.

Mr. Rotenberg: With respect, that is not what you are saying. If you set up a classification under licensing, you can have in your licensing bylaw something which in effect will say that anybody, unless it is a class 2 lodging house, cannot--you cannot get a class 2 lodging house if you hold yourself out as providing some health care. You can provide for that under the licensing bylaw. You can provide the regulations of a lodging house yourself, which I do not have objection to.

The objection I have is that what you are doing is prohibiting people from going to that lodging house and selecting that lodging house, knowing full well that either lodging house A has certain health care standards or lodging house B does not have certain health care standards. A person in a free society says: "I understand that lodging house A has certain standards of health care and lodging house B does not have certain standards of health care, but it is my free choice, despite the fact they do not have those standards of health care, to go to lodging house B."

Alderman McCurdy: Excuse me. Are you referring to clauses a, b or c?

Mr. Rotenberg: I am referring really to the principle of your bill. I am reading from clause c, because you say that is the most important. You have lodging house class A which has health care; you have lodging house class B which does not have health care. Under the licensing act you will be able to do that; you will be able to set up your regulations. You will be able, as I understand it, to prohibit lodging house B, which does not have health care, from advertising that it does have health care under your licensing provision.

You can do all that, which is what you want to do, but what your clause c is in effect saying is that if a person, knowing full well that lodging house B does not have health care, but wishes to go to lodging house B anyway, or that person may have a certificate under clause a or b or just require some assistance in clause c anyway, knowing full well what the regulations are, and knowing full well that lodging house class B does not provide the care under your class A regulations, still in a free society wishes to go to that lodging house, I do not think a government should have the power to prohibit that person from going.

That is really the objection we have to this legislation. Do you understand the difference in what I am saying to you? I hope you do because what you are trying to do, and I understand your motivation, is in effect upgrade a bunch of lodging houses so they will have health care. That is good and you can do that. But you say if there are not sufficient lodging houses class A with health care, a person there cannot go to class B and therefore is out on the street? Do you say that the person cannot, by free choice, go to class B? That is what is implicit in your legislation and that is the part of your legislation we object to as a principle in all three clauses of your bill.

I know what Windsor wants to do and I sympathize with what it wants to do. I cannot speak for the social policy field of the government, in response to Mr. Breithaupt's question, as to what they might be doing on this issue. I can only speak to what the Ministry of Municipal Affairs and Housing is doing which will give the minister the power to set up these two classes, which we agree with, but we do not agree with the power to prohibit people from free choice going to class A or class B.

Alderman McCurdy: I think there is some degree of confusion. Clauses a and b do suggest a limitation of choice in the sense that you describe it, but if one reads the bylaw, it says in subsection 3(b), "No operator of a lodging house shall harbour, receive..." The restriction is on the operator, not on the individual. Do you not see the difference between that and a and b?

Clauses a and b are admittedly contentious. It addresses the fact that there is a problem that has not been solved. If it cannot be solved in this bylaw, I would have to agree with members of both opposition parties that it is about time the government did do something about it. With respect to clause c in the bill and with respect to our bylaw subsection 3(b), can you elucidate for us in what, if any, fashion we can regulate the conditions of people who need help in type 2 lodging homes without this kind of restriction upon the operator?

Mr. Cooke: Mr. Chairman, could I intervene just for a second? I would like to ask Mr. Kellerman and Dr. Jones, but in particular Mr. Kellerman at this point, what his reaction is to the suggestion of the parliamentary assistant that this type of thing could be handled under Bill 11, which is the general legislation?

Mr. Rotenberg: That is part of the problem, not the total problem.

4:10 p.m.

Mr. Kellerman: In that area, I have considered the provisions of Bill 11. It deals, in a very broad term, with the licensing of businesses and the establishment of classes. My concern is that the existing legislation, which is now paragraph 61 of section 208 of the Municipal Act, provides that municipalities may license, regulate and govern classes of lodging houses.

The powers sought by the municipality to prohibit the entry of a certain individual into a lodging house goes beyond the power

that is at present granted to municipalities, in my view. It also exceeds the power that would be granted by the proposed licensing legislation. If section 3 is to proceed, the municipality will not, in my view, be able to pass its proposed bylaw prohibiting a keeper of a lodging house unless private legislation is given. The existing general legislation and the proposed general legislation do not extend far enough, in my view.

Mr. Cooke: Could I ask Dr. Jones under the proposal that the parliamentary assistant has made, and under past practices, how difficult has it been for his department to attempt to regulate rest and lodging homes in the city of Windsor? I guess the same type of problems would also exist throughout the province.

Dr. Jones: That is the problem, Mr. Chairman.

Class 1 is essentially covering the flophouse type of situation, where no staff or operator has to be present on the premises. Class 2 requires the operator to be present on the premises. There is a difference, and that is the essential difference.

The class 1 type we have in Windsor is for the Via Rail staff porters, and that is essentially a lodging house. It is a flophouse; they are there for a couple of nights and they are gone. It is really dying out under the old Public Health Act.

Class 2 is really giving custodial care; not necessarily nursing care, but custodial care. That is where the problem is. This has been going on for 35 years or more. The Public Health Act is vague under this section when it comes to looking after people. There are minor psychiatric problems; there are problems with the Mental Incompetency Act and with the Mental Health Act. You just cannot cover the bases for these people; they are in a grey area. The only way is to have a class 1 and class 2 and then these people can be adequately cared for.

It is not the municipality's fault, it is not the government's fault that we are having deinstitutionalization. It is a good concept. But when you see what we have seen in the city of Windsor, I am sorry, you have to have two classes.

Mr. Cooke: Perhaps I could just add to that, and there will probably be other specific questions.

On the argument the parliamentary assistant is using, I am sure all MPPs in the city of Windsor have had similar problems, but I can think of one specific case that came before me. That was an individual that in no way should have been in a rest and lodging home, he needed much more care than that and he was waiting for an extended care certificate, but there were no facilities available. Instead, this individual was put into a rest and lodging home.

The rest and lodging home was in the process of setting up a so-called--I guess I would describe it as a psychogeriatric unit within a rest home--and there was no type of regulation and the municipalities had not had the authority. You can talk about free choice all you want, but in many cases there is tremendous confusion

amongst people in communities as to what a home for the aged is, what a nursing home is, what a rest and lodging home is. People go into rest and lodging homes thinking they are going into a nursing home, and there is such fierce competition within this sector that the operators will take anybody and everybody who applies to go into these particular facilities.

The fact that there is no one here opposing this proposal from the rest and lodging home sector in Windsor today, I think, spells out the process that the municipality has gone through to find a compromise and to find a way of regulating that is acceptable both to the business and to the municipality.

I plead with the parliamentary assistant, on behalf of very many people in our community who have had extreme difficulty and have not got the proper type of care. There have been deaths that have resulted in communities because of lack of care of ex-psychiatric patients and the elderly, three that I can think of in the last three years alone. We are not just talking about free choice in a free society, we are talking about responsibility and accepting it through regulation.

I plead with the parliamentary assistant, and if I cannot get it through to him because he has had instructions, I hope we will get some support for this law from the Conservative members of this committee today and allow the municipality to pass a bylaw. It is incredibly important.

Mr. Rotenberg: Mr. Chairman, I want to respond because there was a question from the alderman, and I think I lost a little bit because Mr. Cooke intervened.

When the general legislation is forthcoming, and the city solicitor agrees with me, they can set up the classes. They can set up one or two or three classes of lodging homes with regulations and so on. That is not the problem, and that we agree with.

What is in this legislation under clause c, with respect, Mr. Cooke, is not going to solve your problem. If you pass regulations setting up a class A and B and C or whatever lodging house with regulations on care, that is fine, and I agree that should be done. But because you pass regulations, it does not necessarily mean that the community will set up those lodging homes. Nobody may set up a class B or C lodging home. There is nothing to compel a lodging home operator to do it.

The point I am trying to make--and I think it is a democratic point--is this: set up those rules and have signs posted with regulations where the public will know what kind of facilities each lodging home provides, which I think is quite proper. You will be able to do that as soon as Bill 11 is passed. That is part of what you want to do, I am sure.

The other half of it, which is where I part company with you, is that, having set that up, and having class A and B or whatever kind of lodgings you have, then you say to a person that comes out of a psychiatric home or wherever and has health problems, "You cannot go to a class A or class B, you must go to a class C home,

because we prohibit you in this condition going to a class A or B; you can only go to a class C home." This person comes out of the psychiatric or whatever hospital and there are no class C home beds available, so that person is then out on the street. He has not got the choice to go to the second best or the class B homes, where he is not going to get what he should get, but at least is getting some kind of care.

Once you have this legislation and you pass a bylaw saying that ex-psychiatric patient cannot go to an A or B home and an A or B cannot accept him, the person then has not got the free choice to another home. Where is he going to go? He is going to sleep under the bridge.

It is all very well to say, having set up your regulations, that suddenly there is going to be a plethora of classy homes in Windsor and the whole problem is going to be solved. If the problem is going to be solved and the operators wished to do it, you would not need this legislation; they would be there.

I agree with you that there is a problem and that it should be solved. I know the people in Windsor have not been to talk to the people in the social policy field. I think it is a problem that should be addressed more fully.

Having the power to set up these different kinds of homes, how you are going to encourage people to set up homes, when they may not do it because if the homes were being set up you would not have the problem or need the legislation? You should be saying to people, "You need some health care, but you could be okay in a class B home if there are no vacancies in class C homes, rather than saying "Thou shalt not go into one." An operator may not take one in.

As I say, this is where we part company, not in the setting up of the homes--the licensing, the regulations, the posting and so on--but when you say that the man who came out of the hospital either goes to a class C home or sleeps under the bridge, but he cannot go to an A or B home. That may not make sense to you, but I find a problem in giving a municipality that kind of power to exclude those people from those homes when there are no others.

What you are going to say to me, of course, is that if you give them the power, there is going to be pressure on the community to set up these homes. I agree with you, but the pressure may or may not follow.

Mr. Cooke: What would happen would be that the responsibility, if there were not facilities available, would shift to where it should belong. We are getting into a social development question, but you cannot separate the two when you are dealing with a piece of legislation like this and a problem like this.

I am afraid that if the facilities were not available, then the responsibility would come back to where it belongs. I agree with Alderman McCurdy and the position of the committee that to put this bill together took there needs to be province-wide legislation; there needs to be a look under the Ontario health insurance program, to see how this type of thing should be dealt with.

Mr. Rotenberg: I agree with you on that.

Mr. Cooke: THE government has not responded to that problem, so we are looking at second best. If the facilities are not available, you do not simply say to a person who needs some care, "Take the next best thing with no care," and do what the woman did that died out on the Detroit River a couple of years ago. Because she did not get that kind of care, she went out on an ice floe and froze to death.

You do not put people in a place where they are not getting any kind of care from our community. We have a responsibility and our community has decided to take that on, and you are talking about free choice.

Mr. Rotenberg: With respect, in this bill you are not providing any facilities. All you are saying is that unless the facilities are there the person cannot go anywhere.

4:30 p.m.

Alderman McCurdy: There is a fundamental misconception in what you are saying. Such homes already exist. The telephone book is full of rest homes that cater to people who need care.

Mr. Rotenberg: Right.

Alderman McCurdy: I must tell you, in the numerous discussions of this bylaw in city council and with numerous delegations from the operators of rest homes and in hearings by a committee of council on rest homes in which we spent a great deal of time with the operators, not one of them raised the objection you have. Indeed, they insist that they themselves must be regulated, at least in this respect.

The only exception they took to this bylaw was with respect to certain things such as room size--they thought the requirements were too stringent--and other such matters. But nobody questioned the basic need, because they are in business to provide that kind of service. They are concerned that there are some operators exploiting people who need help.

I really find it quite shocking that this argument is being applied to this kind of definition at the bylaw level, that the same exception could be taken by anybody to any kind of institution in the province in that respect, such as nursing homes.

Mr. Renwick: My questions are directed toward understanding what is being said. Perhaps Mr. Kellerman would help me.

I assume I am looking at the right section of the Municipal Act; in RSO 1980, chapter 302, paragraph 208(61), dealing with lodging homes. Is that correct?

Mr. Kellerman: That is the general legislation.

Mr. Renwick: Yes, the only reason I asked that rather particular question is that there is obviously an error in the explanatory note to the bill, which talks about paragraph 208(68). It is paragraph 208(61)? Right.

Just for understanding, not for argumentation purposes; my first question is that as I read that section of the Municipal Act, you can now provide for classes.

Mr. Kellerman: That is quite true. You can have various classes, but the city wishes to go one step further and prohibit the operators from taking certain people into a particular type of lodging house.

As the courts have defined licensing, it deals only with regulating. You cannot, under the guise of licensing, prohibit. In order to prohibit the operator of the lodging house from doing something, it is my view that the legislation does not go far enough and it is necessary to seek private legislation.

Mr. Renwick: All right, let me assume for the moment that you are correct in that. Where do the people go who are prohibited under clause 1(a)? If I am the holder of a certificate of eligibility for extended care service, where do I go?

Mr. Kellerman: I believe the intention is, in a nursing home to receive--

Mr. Renwick: Licensed by the province.

Mr. Kellerman: Licensed by the province; to receive the type of care required in the particular patient's condition.

Mr. Renwick: In understanding that the motivation is to upgrade the quality of service people will receive in your area where this bylaw would operate, are there sufficient nursing homes licensed by the province to pick up people who have certificates of eligibility for extended care service?

Dr. Jones: The problem here is when a person is admitted to hospital and they think he requires a certificate, they issue one. Then when a person is ready for discharge it takes six months to cancel this certificate, for some reason or other. If he still requires it, he should go to a nursing home. There are no facilities in a lodging house for caring for this person. He should go to a nursing home. Frankly, it is not the municipality's responsibility to supply those nursing home beds.

However, if you do not cancel that certificate and he goes into a lodging house, I think you are doing that person an injustice. The problem basically is an administrative one and really of looking at what you are doing with your certificates of eligibility.

If a person does go into a lodging house and then requires a certificate, there is no reason why one could not be applied for then, just the same as if he had been at home. Then you may have to wait two or three months for a place.

That is all right; I think that is a reasonable way. But to discharge him from hospital with a certificate and put him in a lodging house, I think is wrong.

Mr. Renwick: I am not arguing, but I do not think you are responding to my question. This bylaw will operate within the area of the municipality of the city of Windsor, correct?

Dr. Jones: Yes, that is correct.

Mr. Renwick: If there are people within that municipality who have certificates of eligibility for extended care service, are there available in Windsor the licensed provincial nursing home places to take care of those people?

Dr. Jones: Yes, I believe there are.

Mr. Renwick: In other words, if you say, "No, you cannot go into a lodging house--"

Dr. Jones: Can they go somewhere else?

Mr. Renwick: --can you say, "You can go to a proper place"? A proper place being a nursing home licensed by the province.

Dr. Jones: The government has just authorized another 100 nursing home beds in the city of Windsor, not the county.

Mr. Renwick: So as a practical matter, that prohibition is not going to hurt anyone?

Dr. Jones: I do not think that would hurt anyone, no.

Alderman McCurdy: It would mean more room than was needed if those who were in nursing homes and did not have extended care certificates were to make those beds available to those who really need them, those who are in possession of extended care certificates and cannot have access to nursing homes because the beds are occupied.

Mr. Cooke: One of the reasons that there may be--Dr. Jones can correct me if I am wrong--people in nursing homes who should not be in nursing homes and would properly belong in rest homes is because there is a great fear in many communities that if one goes into an unregulated rest home, he is going to get rotten care. I am not accusing doctors of doing this, but I think there are times when extended care certificates are given and people go into nursing homes because the alternative of an unregulated rest home is fearful.

Dr. Jones: That is a very good point.

Mr. Renwick: I certainly do not want to move into the hornet's nest of Windsor politics, I am just trying to understand the bill.

What the medical officer of health is saying to me is that for practical purposes if we were to pass this and prohibit access to lodging houses by people who have certificates of eligibility for

extended care service, there are available in the Windsor area beds for such people in extended care facilities operated by the provincial government.

Dr. Jones: Yes, it would also assist in the proper placement of these individuals, given the options. It really would.

Mr. Newman: You are saying that there are sufficient nursing home beds to accommodate these people?

Dr. Jones: No, there never will be sufficient nursing home beds provided the number of people who are 65 keeps on increasing. This is going to go up another five or six per cent in the next 10 years. We are going to have to establish more nursing home beds.

At the present time I think we could cope, if they were properly managed. We do have an assessment and placement centre established by the Victorian Order of Nurses who run the home care programs. This is a good way of offering people the right place at the right time. With this bylaw we could do an awful lot more for these people.

The Vice-Chairman: We have the director of legal services from the Ministry of the Solicitor General to speak in respect to clause 1(d), but before we get to that I had some questions myself.

Mr. Renwick: I am just getting into full swing.

The Vice-Chairman: Okay, swing away.

Mr. Renwick: I am trying to understand the bill. Clause 1(b), for practical purposes, seems to imply a power to move person out of a lodging home.

Dr. Jones: Yes, I would agree with that.

Mr. Renwick: Yes, there are two classes; those who are in and get a certificate of eligibility and those who have one and apply to get in.

Dr. Jones: That is not the intent. The intent is to stop them going in if they have a certificate. It is the other way around.

Mr. Renwick: Yes, but if a person is in a lodging house and receives one, you are purporting here to establish the terms and conditions under which he can remain in that house.

Dr. Jones: I would agree with--

Alderman McCurdy: For a specific period of time.

Mr. Renwick: I understand that. It is your purpose to move out of lodging house accommodation persons who have extended care certificates, given the humanities of the situation. That is your purpose.

Dr. Jones: That is true.

Mr. Renwick: How do you answer the question raised by the parliamentary assistant that if you establish a classification for lodging houses that may provide this type of assistance to people-- Again, do I take it from what Mr. McCurdy said that in fact there are available now such lodging homes in the Windsor area? In other words the facility is available, there are people who could get this separate and distinct class of licence--

Dr. Jones: Yes.

Mr. Renwick: --and would want it?

Dr. Jones: Most of them, 99 per cent of them.

Mr. Renwick: So that again, in prohibiting a keeper of a lodging house from accepting such a person there will be such places where people can get this kind of care?

Dr. Jones: Yes.

Mr. Renwick: As you can gather, what I am worried about is the word "prohibition." That means somebody cannot get into something. If there aren't any you obviously cannot get in, but you are telling me that when you establish these classes there would be a number of lodging houses that would qualify for this kind of a licence as a practical matter now.

Dr. Jones: Yes.

Alderman McCurdy: The tenants are not limited to those who require care. There is a mixed population.

Mr. Renwick: I understand that, but to take in the particular kind of person that this clause deals with you have to have a separate class of licence, and there are places that would be providing that and there is no lack of them.

Dr. Jones: No, no lack at all.

Mr. Renwick: What do you intend by the grandfathering clause there, the different standards one in subsection 1(2)? Are you in fact going to grandfather all the existing ones or are you going to require the existing ones to get one or other of the types of licence? What is your thought behind that in subsection 2?

Mr. Kellerman: The intent there was with respect to fire control equipment, that some of the older lodging houses could not easily convert their existing fire alarm system to a more up-to-date system and as a result of objections or representations made by the lodging house keepers, it was determined that the older type of house could carry on with the existing fire alarm system but that a new lodging house would be required to provide the most up-to-date fire alarm system.

Mr. Renwick: I suppose your request for some flexibility through variances is directed to the same kind of question.

Mr. Kellerman: It may well be the room size may be short by a very nominal amount and it is in order then to obtain the variance from the licensing committee.

Mr. Renwick: Would it be fair for me to summarize that what you have said to me is that if this were passed that in the existing lodging house facilities available in Windsor at the present time and the existing nursing home facilities licensed by the province available in Windsor at the present time the accommodation is, shall we say, adequate--the number of available places is adequate? I do not mean sufficient, but--

Dr. Jones: Specifically, there are--

Mr. Renwick: The medical officer of health is, for practical purposes, saying that it would be to better care for those who need this kind of care as itemized in clause c.

How many would we roughly be talking about? How many lodging houses would there be at the present time?

Alderman McCurdy: I would have to count.

Mr. Renwick: Roughly.

Alderman McCurdy: When last counted there were 1,662 places and, as I recall, the level of occupancy is around 80 per cent.

The Vice-Chairman: By places you mean beds?

Alderman McCurdy: Beds, yes.

Mr. Renwick: I believe that answers my concerns.

Mr. Rotenberg: I just want a clarification, but I can wait.

Mr. Wrye: I apologize; I would like to ask these questions, if I could, of Dr. Jones. I may be going over some of the same ground that my friend the member for Riverdale (Mr. Renwick) just went over. I think I understand it. In essence what I am hearing from the city and the parliamentary assistant is that the city is saying that it has an adequate number beds, and Alderman McCurdy has just given us the number as 1,662 beds, but the city wishes to do now is to categorize the beds and ensure that those who need beds with a higher standard of health care, for whatever reason, will not be placed in beds with inadequate controls. The feeling is that right now they may have 1,662 beds in the city of Windsor but they do not have an adequate number up to standard and that they will be able to raise the level of care through the city's initiative.

Alderman McCurdy: By the way, additional beds are going to be furnished as well.

Mr. Wrye: What we are hearing from the parliamentary assistant is the concern expressed that somehow, because Windsor is

going to ask for uplifting of standards, all of a sudden one of these days it is going to have people sleeping under the bridge under the railroad tracks.

I gather, since we have 80 per cent occupancy, that a lot of these lodging home operators would be more than willing, as good supporters of private enterprise, to raise their standards so that they could take in these people. Dr. Jones, would that be your feeling as the medical officer of health?

Dr. Jones: This is essentially wanting to raise the standards comparable to what you would expect in society.

Mr. Wrye: And somebody who wanted to be a private entrepreneur would immediately move to raise his or her own standards so they could fill up their lodging.

Dr. Jones: Sure.

Mr. Wrye: That clarifies it for me. I am at a loss to understand what the parliamentary assistant's concern is. I really am.

Mr. Rotenberg: May I ask you, just to clarify it, are you saying there are now sufficient places for the people who need the better quality of health care in lodging homes?. That is what you said?

Alderman McCurdy: I think we should really qualify this business of health care. Health care may be a part of it, but we are talking about people who need help in the exercise of the ordinary manipulations of living, getting out of bed, going to bed, washing themselves, medication, and a variety of things.

Mr. Rotenberg: Your medical officer of health is saying, if I read you correctly, there are now a sufficient number of beds in the city of Windsor that meet the standards you are setting for people who require that kind of care.

Alderman McCurdy: They either meet the standards or will meet the standards. They have not indicated any incapacity to do so.

Mr. Rotenberg: Let me go over that again. I heard you say, and correct me if I am wrong, that there are now in the city of Windsor--I think this is what you just replied to Mr. Renwick--an adequate number of beds for people you describe in clause c of this legislation who need some form of assistance. You have now an adequate number of beds in the city of Windsor for those people who require that kind of assistance. Is that what you said or is that not what you said?

Alderman McCurdy: There are sufficient beds if you take into account that we have not listed all the boarding houses in the city in which are housed some of these people at present. If you take into account that a great many of these beds are occupied by transients, alcoholics and so on, who would not fall under the definition, then there are enough beds and there are enough homes that would meet the standards that we are asking to have implemented in this bylaw.

Mr. Rotenberg: If under the new licensing legislation you set up class A which does meet these standards and class B which does not meet these standards, and if for people who need a class A home there is a sufficient number of beds, then why would anybody go to a class B home who needs care?

Mr. Cooke: Your insensitivity to the problem is absolutely incredible.

Alderman McCurdy: Have you read the speeches on the government side on the issue? Nobody disagrees that there needs to be the provision of some kind of place for people to live who are being deinstitutionalized.

Mr. Rotenberg: You just said there are enough of them.

Alderman McCurdy: What do you mean, that it would be sufficient to have beds under the bridge? We are saying there ought to be a type of home that would provide the facilities that--

Mr. Rotenberg: Mr. Alderman, please, if I am confused, he answered Mr. Renwick's question that for the kind of people who need this kind of special care or some form of extra care, there are sufficient places for them.

Mr. Renwick: Let me intervene as I asked the question. Let me try to explain to you what I heard the medical officer of health saying. I hate to classify people, but I take it there are three classifications of people we are talking about.

5:40 p.m.

One class is people who have certificates of eligibility for extended care service. I took it that what the medical officer of health was saying was that within Windsor there are sufficient nursing home facilities, licensed by the province, to take care of those people. That is one class. We are not hurting anyone by prohibiting them from going into lodging houses.

The second class of people is the kind of people who do not have certificates of eligibility for extended care service but need the kind of care set out in clause 1(c). That is the second class.

The third class is other people who use lodging houses and do not need that kind of care, whatever the decision is.

I took it that what the medical officer of health and Alderman McCurdy were saying in the figures they gave me was that there is an aggregate overall number of places to meet the needs of those three classifications. They are trying to make certain that people get into the proper kind of accommodation for the care they need. I think that is all they said.

Therefore, what they want to do is to provide a second class of lodging house--not second-class in standard--that will provide this kind of care and they will be able to sort out the people among the three types of facilities where they can best be dealt with.

That is what I took to be what I heard.

Mr. Rotenberg: I thought I heard, Mr. Renwick, with respect, from the medical officer of health that--

The Vice-Chairman: May we interrupt this argument? There are others who want to speak.

Mr. Renwick: Sorry to go on about it, but that is what I heard.

Mr. Rotenberg: No, the basis was there were enough clause 1(c) people. They are enough places for the clause 1(c) people, that is what they said.

Mr. McLean: Mr. Chairman, if I could speak very briefly. The delegation came here; they have the benefit of the bylaw they are passing. We have a piece of paper with an act in it.

I would like to know from you, from the start, what you are asking for in an outline that we can understand. It has been going back and forth here with regard to lodging houses A, B or C. Tell me what you really want, whose jurisdiction it is under and what licences you need and then I will have the benefit of what you have in your bylaw.

Mr. Kellerman: Briefly, Mr. Chairman, it is a licence under the licensing provisions granted in the Municipal Act. The licensing commissioner, in the proposed city of Windsor bylaw, will grant a licence for one or both of the following classifications. That says it in essence.

"Class 1: Where the operator provides no assistance to the resident in caring for his health and for his personal needs, including washing, dressing or eating."

The second class of licence for which application can be made is, "Where the operator provides assistance to the resident in caring for his health and for his personal needs, including washing, dressing or eating."

The operative clause or the control on that bylaw is that "No operator of a lodging house shall harbour, receive or lodge for hire any person who requires assistance in caring for his health and for his personal needs, including washing, dressing or eating, unless the operator has obtained a class 2 lodging house licence for such lodging house."

Therefore, the control is in setting up two classes of lodging house and then prohibiting the keeper of a lodging house from taking in as a resident a person who needs care, unless that operator has obtained from the licence commissioner a class 2 licence. It is a full circle.

Mr. McLean: This is all under the health unit?

Mr. Kellerman: No, this is under the general legislation allowing municipalities to license lodging houses. Municipalities cannot license nursing homes or any other type of institutions, they are only licensed by the province. The residual power, as it were, is to license lodging homes. The doctor could speak better, but the problem has arisen in the operation of lodging houses in the city of Windsor.

Mr. Wrye: Would it be useful to members of the committee if we were to run off copies of the draft bylaw? Would you like that?

Mr. McLean: Yes, I would like to have that. I would like a little further clarification. How many residents do you have in one lodging home? Do they vary?

Alderman McCurdy: From 10 to about 250.

Mr. McLean: Does the person who goes into the lodging home pay his own way?

Alderman McCurdy: Some do and some are there on social assistance. The concern that has produced the bylaw and which has been the observation of many of us is that when ones goes into a rather typical type of lodging home, one finds very crowded quarters. For example, I attended at one lodging home in which there 30 people eating in a room which was about 25 feet by 20 feet. I observed a bedroom in which the beds were a foot and a half apart, cheek to jowl with no privacy, medicine unlabelled, often mixed up.

There were very difficult conditions in which to operate. There was one instance that because of the failure to keep proper records, which this bylaw requires, of an old woman having been given the same tranquilizers by two different administrators, two different physicians, and then, as a consequence, finding herself in very difficult straits.

Mr. McLean: In your homes do you have to spell out, say, that you have to have a medical doctor on call? Do you have to have nurses?

Alderman McCurdy: Yes. There are requirements set out for having nurses available under particular sets of circumstances and physicians attending under certain sets of circumstances. For example section 19(e) sets out the level of staffing. It establishes that where a resident suffers an illness, under particular sets of circumstances a physician must be called. It establishes room size. By the way, one of the reasons why this private legislation is before you is that we think the room size requirements under the Public Health Act are a little extreme. It sets out fire safety standards, amenity standards and the like.

Mr. McLean: I am just as well aware as anybody of the great need, but what I want to know is there any place else that has anything similar?

Alderman McCurdy: Yes. Hamilton has its bylaw.

Mr. McLean: How many other places in the province have something the same as what you are asking for?

Alderman McCurdy: Hamilton is the only one I know. It was the first. That bylaw, by the way, was sent to two ministries without a peep. Its provisions are, with respect to the definition of a type 2 lodging home, essentially the same as ours.

Mr. Kellerman: Hamilton's bill, with all due respect, may be deficient in that it only sets up two classes and there is no provision governing the operator as to whom he can take in.

Mr. Rotenberg: All of things you have outlined, except for the room size and the fire regulations, you can do under the present legislation. Is that not correct? You can do all that?

Alderman McCurdy: Yes. This is why only a portion of the bylaw is before you.

Mr. Adamac: Mr. Chairman, what you cannot do is to prohibit an operator from taking a person who needs a certain specialized care into his lodging home even though he has a lodging home designed and operated for a person who comes in off the street, a transient. We do not disagree with you. Your logic is reasonable, but it is only reasonable for a municipality that cannot produce the three levels we are talking about. Large municipalities can. Windsor can.

This undertaking is good for Windsor; it may not be good for smaller communities. We do not advocate that it does the function as general legislation; it cannot work.

Mr. McLean: Why would it not?

Mr. Adamac: It could not work in the town of Essex, for example.

Mr. McLean: Why not?

Mr. Adamac: Simply because the population would not produce the two levels of lodging homes. In other words, you could not expect a small community to have enough clients and sufficient demand to make it possible for a private operator to operate a class 1 lodging home, which is the type built for transients, and a class 2 lodging home, which is the type built for people who need care--not the same level of care that a nursing home deals with, but certainly an intermediate level of care. That is why we do agree with Mr. Rotenberg that this legislation is good for Windsor but certainly not good for general legislation.

4:50 p.m.

Mr. Brandt: I had a couple of questions. One was in regard to the differences between Hamilton's present legislation and what you are asking for here, which I believe was answered.

I did want to ask some questions in regard to your final remarks in connection with the opposition you have to general legislation. Windsor has a history, and perhaps a reputation, for having prolific writers of resolutions at conferences of the Association of Municipalities of Ontario and other such forums.

Mr. Cooke: Always supported by the former mayor of Sarnia.

Mr. Brandt: I knew him well. He was a fine chap.

That being the case, and having always received the support of the city of Sarnia in many of your undertakings, and from the mayor as well, I wondered why you went the private bill route as opposed to perhaps some form of umbrella legislation that would bring in other cities of a comparable size.

Alderman McCurdy: My response to that would be, with all due respect, that a number of members of the Legislature have, as reported in Hansard, repeatedly requested just such legislation, and the response of the government has always been that the municipalities are to be encouraged to pass these kinds of regulating bylaws.

I would have thought that interventions in the Legislature are generally going to be more effective, and seemingly they are, than resolutions pumped up from Windsor even when supported by the mayor of Sarnia.

Interjection.

Mr. Brandt: Have you in fact taken this matter to the Association of Municipalities of Ontario with any degree of success or otherwise?

Mr. Adamac: Mr. Chairman, we have not, and for the good reason that it is so difficult to establish a population criterion for the two classes we are talking about. One community of 50,000 might have the demand for the class 2 lodging home and another municipality with the same population might not. It is just not logical to have an umbrella type of legislation.

This legislation really is designed for particular municipalities that know what their inventory of homes is and what they are capable of accommodating. Windsor has that inventory of homes, and it is just a matter of moving the right people into the right places; that is all. They are now capable of moving into the wrong places, and we want to move them into the right ones.

Mr. Brandt: Could you help me with some of the discussions that occurred during your hearings? Perhaps the alderman could respond to this question. You discussed in the material I have not yet read room size and certain facilities that were required of the different classifications.

If the major thrust of this is to improve facilities for people that require them, which I believe is the main intent of what

you are trying to do, were there any comments made by existing operators with respect to cost problems, the expense of undertaking these kinds of modifications to their buildings? Secondly, did you receive any representations whatever from the lower-classed operator, if I can use that term, who is providing less than adequate facilities at the moment?

Alderman McCurdy: Yes.

Mr. Brant: The point has been put forward in connection with the second part of my question, that perhaps these facilities may not be adequate, but there may be a need for facilities of that type in your community for certain types of people. I am wondering what the economic impact will be both on the improved facilities and the residual facilities that are left over.

Alderman McCurdy: With respect to the latter, that is, those lodging homes which might not be able to meet the standards, most of these would probably survive as homes that we would prefer not to admit people who require care, namely, functioning as flophouses, as they do, for short-term transients and the like. We are not trying to regulate every boarding house in the city, and there are certainly some that will not meet the standards and some which have complained, but it is doubtful that they will be put out of business on that basis.

On the other hand, in the course of the many council deliberations and from the delegations heard in the hearings that the committee had and in written submissions to that committee as well as oral submissions, I think by the end of the process we had reached the point where the vast majority of them felt that they could with relative facility meet the requirements with two conditions.

One was that we not impose upon them certain safety requirements with respect to fire, which were rather more expensive, and hence the grandfathering of it. The other is dealt with in the legislation proposed here, and that is to make the space requirements less stringent. What the Public Health Act requires--and we have the opinion that that sets the minimum room size for lodging homes--we think is just a little too stringent. It could probably be decreased. So most of them are saying that they can indeed meet the standards, but there is no one in business who thinks that they can keep up with inflationary costs all around.

There are some things that we would like to have had included. There are some aspects that might be described as the social care of people in these homes that it would have been nice to provide for. However, that would have made it too costly and we think that is a responsibility that resides elsewhere.

We have attempted to be very reasonable with respect to staffing, for example. We achieved in our bylaw a description of the required level of staffing that pretty much corresponds to the average staffing levels of perhaps two thirds of those which are operating which could be considered of good quality.

I was just reminded that I might suggest how many meetings we had. I guess it must have been something of the order of 15 all told. I see the chairman looking at the clock. Some of them lasted rather long too.

The Vice-Chairman: I would imagine so.

Mr. Brandt: I have a brief question. I want to pursue the point just for a moment so that I can get a full appreciation of what you are saying.

The prohibition part of the bill causes me some concern. When the parliamentary assistant, Mr. Rotenberg, addressed the question about the individual who requires perhaps an absolute minimal kind of service by way of assistance. You have categorized the type of service that would be provided in this higher level of care, where a person might need assistance with meals or perhaps bathing facilities, perhaps a minimal level of drug care, that sort of thing.

What about that individual who falls between the cracks? It is always a difficulty of government, attempting to very carefully describe the kind of individual who would go into each of these facilities. I do have some concerns about the person who would fall into the grey area of not requiring all of the care that you are suggesting some of them may require, and where they could be looked after in a reasonably adequate way in one of the less grandiose kinds of facilities.

I wondered if that type of individual exists in your mind, or whether that is a figment of the imagination of the parliamentary assistant or myself, and why you would want to prohibit that kind of person from getting what could be, in cases that I can think of, probably better care than they are receiving now.

All of us have come in contact in our political careers with people who are living in absolutely horrible conditions, and even though this lower-class home we are talking about may not be acceptable to our standards, it could very well be in some instances a step up in terms of accommodation.

Alderman McCurdy: If a person does not need assistance, he or she knows it, and will not seek it. There is a certain kind of casual assistance that I would give even you, and I do not think you and I have to be the class 2 type of lodging home for me to open your door for you or hand you a salt-and-pepper shaker. Those are trivial kinds of assistance.

We are talking about someone who needs assistance in the ordinary course of living on a regular basis. I think that is contained rather obviously in the definition of the class 2 type of lodging homes.

Mr. Brandt: It is Mr. Rotenberg's Aunt Martha that he spoke of earlier whom I am worried about,.

The Vice-Chairman: Have you finished, Mr. Brandt?

Mr. Brandt: Yes.

Mr. Newman: Mr. Chairman, I just cannot understand why there would be so much concern and so much discussion when all the city of Windsor is trying to do is improve the bare level of subsistence in some instances to the unfortunate in the community. I would have thought that everyone in here would see that--

Look, the city is only trying to improve things; it is not trying to make it worse for the individual who needs this type of care. The various categories of care you do have are all going to be provided.

5 p.m.

Mr. Rotenberg: Nobody disagrees; it is just the prohibition part that bothers people.

Mr. Newman: Let us put the bill to the vote and--

Mr. Wrye: Very briefly, I want to remind my friend from Sarnia that the Aunt Martha perhaps does not really exist, because class 1 is where the operator provides and the operative words are "no assistance," zero, none at all. The parliamentary assistant has come up with that one in a million possibility where a minimal amount of assistance is going to be needed.

As Alderman McCurdy says, we are not talking about people who need the salt-and-pepper shaker or the door held open. We are talking about people who need a level of assistance. The prohibition is not placed on that person. It is placed on the operator of the lodging home from accepting that person who will need some assistance.

I think it is a very realistic approach, and in a sense, it is a protection for the operators of the lodging homes who, after all, are not going to be in a position to be able to offer the assistance. That is why they are class 1 lodging home operators.

I think the bill is reasonable. I think it will raise the level of care for these people and I think the city of Windsor should be commended. I think this committee should commend the city of Windsor by passing section 1 of Bill Pr6.

The Vice-Chairman: Perhaps I could ask a few questions, trying to clear in my mind some of the comments made earlier. As I understand it, Mr. Kellerman, there is nothing in law that would prevent you from establishing under section 208 of the Municipal Act the two classes of lodging house that you propose in the bill?

Mr. Kellerman: That is correct.

The Vice-Chairman: So then it is a question really of getting the people in the community into the right category or class of lodging house.

Mr. Kellerman: That is right, by setting a prohibition upon the operator which needs--

The Vice-Chairman: I can understand your objectives and I tend to take up a bit where Mr. Brandt and the parliamentary assistant left off in that I find clause 1(c), the sort of guts of the bill as you indicated, to be sort of potentially oppressive, not only to the keeper but also to a person who is suffering from a very minimal type of disability but who does need assistance even if it is assistance in cutting the meat on the plate into bite-sized portions. I think we have all seen this sort of thing and to prohibit, in effect, that sort of person from selecting a boarding house that satisfies his or her requirements seems to be, in my mind, to have an element of oppressiveness.

There is one other thing. Where, in your bylaw, are included the hostels, the YMCAs, the YWCAs, the charitable institutions that provide accommodation to people for possibly a week or two weeks; if they can pay they pay, if they cannot they cannot, and sometimes they do need assistance?

Alderman McCurdy: That is type 1 essentially. One of the problems that precipitates this whole business is the morass of mis-terminology which exists with respect to every place, practically, in which people may live. If there were a definition of a rest home or a lodging home that would distinguish it from a boarding house and a variety of places, quasi-hotels and the like, that house people who do not require care. You say that there is an element of oppressiveness in this. The fact of the matter is that it does not limit the choice of the individual who can make a choice because he can live in a type 1 or a type 2, but a type 2 cannot hold itself out as giving care.

The Vice-Chairman: As I understand Hamilton's bylaw, it classifies boarding houses and designates with respect to each of those classes the type of service that they are to provide. I do not know if the bylaw has a prohibition in it, but I do know from what I have been advised by the parliamentary assistant that there was no private legislation. This is what puzzles me. Why, in the operation of things with powers already substantially given in the Municipal Act, do we need section 1 of this bill except for the prohibition clause and possibly--and Mr. Ritchie will be speaking to this--the fire protection clause? Could you not have tried the two classes to see whether the pegs would fit in the right holes?

Alderman McCurdy: What would constitute the two classes? How would you define them?

Mr. Kellerman: It is my concern, Mr. Chairman, that if I am satisfied the general legislation does not extend to meet the needs of what the city of Windsor's council has determined, I see no need in testing it needlessly in the courts, and I think counsel for the ministry is in agreement on the narrow point that powers sought by the city exceed the powers contained in the general legislation.

If I could assist you, Mr. Chairman, you were questioning the meaning of lodging house. The Municipal Act does provide an existing definition and that definition has been picked up in the city of Windsor bylaw. All we can license is our lodging houses and it is, in essence, a subcategory of two types of lodging houses which is the reason why this bill is before you.

Mr. Rotenberg: With respect, I think the point I am trying to make is even in the present legislation and certainly in the proposed legislation, you can do everything you want to do as to class and classes to prevent some of them holding themselves out as being class A when they are class B. You can do all of those things. I think the only place we part company is in the prohibition, and the only thing you cannot do under the present legislation is the prohibition.

Mr. Kellerman: Clauses a and b are at the moment ultra vires the existing legislation; d is patently ultra vires. You cannot delegate. It may well be that clause f is within the existing legislation, but the whole of section 1, with possible exception of clause f, exceeds--

Mr. Rotenberg: But a, b and c are the prohibition clauses and that is where you and I part company. The ultimate outline you want to do you can do under existing legislation on the general problem of classifications and legislation and prohibiting somebody from holding themselves out to be--

Mr. Renwick: You are not listening. You did not listen to Mr. Kellerman. Why did you not listen to Mr. Kellerman when he explained about the clauses which, in his judgement, on the work he has done are not adequate?

Mr. Rotenberg: I am not talking about the clauses, Mr. Renwick. I am saying the things the alderman wishes to do, which he just outlined a few moments ago, can be done except the prohibition part. I am not talking about the (inaudible) things.

Mr. Renwick: Mr. Kellerman explained to you the other areas and you were not listening.

Mr. Rotenberg: I was listening, Mr. Renwick.

The Vice-Chairman: Could we move on then to clause 1(d)? Mr. Ritchie wants to speak to this clause. Mr. Ritchie, incidentally, is the director of legal services in the Ministry of the Solicitor General.

Mr. Ritchie: Thank you, Mr. Chairman. Yes, you are correct, I am representing the Ministry of the Solicitor General today and the fire marshal, of course, is one of the components of our ministry.

We are objecting to clause 1(1)(d) which is the clause authorizing a bylaw delegating to the local fire chief the power to require and approve the installation of a fire alarm system and emergency lighting in any lodging house. It is our submission that this clause, first, duplicates the law, and, second, confuses the state of the law. Therefore, we feel it is unnecessary and should be deleted from the bill.

I will explain that in a little more detail. At the current time, the fire marshal is working on the balance of the fire code. The fire code is a regulation that would prescribe all the fire safety rules. It would be uniform from municipality to municipality. In other words, it would apply across the province.

The first portion of the fire code came into force last November and the fire marshal's work on the fire code is proceeding. The intention is that it prescribe fire safety rules for lodging houses and, therefore, we are concerned that if this section 1(1)(d) was passed, there is a potential conflict and certainly a confusion that would arise in the state of the law before too long.

Second, we would like to point out that the current law really covers the same ground. I am referring to section 18 of the Fire Marshals Act. That is a very broad provision that empowers fire departments to require any installations needed for fire safety in any building. This, of course, would include lodging houses. It is our contention that the fire chief already has the power that is referred to in clause 1(1)(d).

One of the differences would be that under clause 1(1)(d), you do not have the protections to be found in the Fire Marshals Act--in other words, the rights of appeal. If an order is made under the Fire Marshals Act, and the owner feels that the fire alarm system, the emergency lighting or whatever, is unnecessary and that there is a viable alternative and that it is going to cost too much, he does have rights of appeal under the legislation. This is a separate provision that would appear to circumvent the normal rules under the Fire Marshals Act. We are talking about a question of fairness there. The power does exist in the Fire Marshals Act right now, so no one would go unprotected in the time it takes to cover this subject matter in the fire code.

That basically is the position of the fire marshal and of the Ministry of the Solicitor General. We are objecting to clause 1(1)(d) and we feel it should be deleted from the bill.

The Vice-Chairman: Thank you, Mr. Ritchie. Does anyone have any comments on Mr. Ritchie's remarks?

Mr. Kellerman: If I could consult with the balance of my delegation briefly, we may be prepared to withdraw that section.

Interjections:

Mr. Kellerman: We are prepared to delete that subsection.

The Vice-Chairman: Is it agreed by the committee that clause 1(1)(d) be deleted? It is agreed.

We are now on clause 1(1)(e). Mr. Renwick had already made some passing reference to this clause. Does anyone have any particular questions with respect to clause 1(1)(e)?

Where is the parliamentary assistant? Did he have anything to say? We are on clause 1(1)(e), the authorization for variances.

Mr. Rotenberg: Mr. Chairman, with respect, clause 1(1)(e) logically comes afterwards. I understand clause e. If clauses a, b and c pass, then clause e says that for existing ones you can vary. Is that correct?

The Vice-Chairman: Yes.

Mr. Rotenberg: If clauses a, b and c are carried, clause e should be with it. It is part of the package.

The Vice-Chairman: I am reluctant to allow licensing committees too much elbow room with respect to variances.

Mr. Rotenberg: Why would that be the licensing committee rather than a council to do that (inaudible) variances?

Mr. Kellerman: There is an existing licensing committee which is provided for in the city of Windsor's special legislation, granted, I believe, in 1978 or 1979.

Mr. Rotenberg: Is that a committee of council?

Mr. Kellerman: That is a committee of all members of council, yes.

Mr. Rotenberg: All members of council. I gather that the type of variations you want in clause e makes it legal to be nonconforming. Is that correct?

Mr. Kellerman: In essence that is correct. To allow someone to attend before the licensing commissioner because of a certain inability to meet the terms of the licensing bylaw. He could then go before the licensing committee to allow a variation and grant the licence.

Mr. Rotenberg: The licensing committee is really a committee of adjustment for the purposes of this act, in effect?

Mr. Keller: Yes, it would be, or very similar to it.

Mr. Rotenberg: Mr. Chairman, I have no real disagreement. That one does not bother me particularly.

The Vice-Chairman: Clause 1(1)(f) is the minimum room size that has been discussed.

Subsection 1(2) is the cutoff date, the grandfather clause, as Mr. Renwick identified it, as to standards at least--

Mr. Breithaupt: Is that a useful one, Mr. Chairman, considering that the bill was brought in before us or probably planned last fall? Is January 1, 1982, still the date that you wish?

Mr. Kellerman: The committee may wish to consider amending that to September 1, 1982.

The Vice-Chairman: We will consider that.

Mr. Rotenberg: Just to ask, under clause f, why could you not do the minimum room size under your normal zoning bylaw procedures?

Mr. Kellerman: Room size is not normally dealt with under a zoning bylaw.

Mr. Rotenberg: It could be, could it not?

Mr. Kellerman: I was concerned whether it could be dealt with under licensing and, to avoid a problem, asked for special authority to control minimum room size.

Mr. Rotenberg: I do not feel strongly one way or the other, but every time something should be done under a zoning bylaw which has the protections of OMB hearings and you want to do it without it, I wonder why.

Mr. Kellerman: No. As I understand it the Planning Act does not deal with the size of a room in a building. The Planning Act may deal--and it is questionable--with the number of units in a particular piece of property, but certainly I have never seen a zoning bylaw, nor do I think it extends to it, to control of room size.

Mr. Adamac: The other problem, Mr. Chairman, is that it would take a considerable amount of time to approach this through a committee of adjustment, because a committee of adjustment has much more stringent rules than this licensing committee would have. We could resolve this problem through the licensing committee in maybe 14 days or less.

Alderman McCurdy: We understood the Public Health Act establishes 600 cubic feet as the room size in such buildings. We feel that standard is too stringent to be applied, so we are asking for the ability to establish a smaller room size.

The Vice-Chairman: Any others present wishing to make representations with respect to section 1 of Bill Pr6, An Act respecting the City of Windsor?

That being the case, no on indicating a desire, we are going to proceed to the votes on section--

Mr. Mitchell: Excuse me, Mr. Chairman. I apologize for coming in late but other things were demanding my time. You say you are wanting to go to smaller room sizes in the lodging houses?

Dr. Jones: Mr. Chairman, may I speak to that? The problem is that if you measure 600 cubic feet, it depends on the height of the room and this can vary enormously. To establish equitable size, we feel it would be 50 square feet and assuming a minimum height of eight feet for a room, you will get a reasonably sized place for a resident without undue harassment of the operator.

The Vice-Chairman: This is what the bill deals with; three separate matters.

Mr. Rotenberg: If I could make a point of procedure or a point of something; if clause f is passed, it still does not relieve you of responsibilities under the Public Health Act. In other words, we could give you clause f, but this still does not relieve you under the Public Health Act, as I understand it. Is that your understanding?

Mr. Treleaven: I would think it would. Does it not refer to part of the statutes?

Mr. Rotenberg: Yes. It would relieve you from the restrictions of the Public Health Act, I am sorry.

5:20 p.m.

The Vice-Chairman: There is usually a saving clause in it that this act applies. In any event, I propose then to turn to the votes on clause by clause.

On section 1:

Mr. Chairman: Shall clause 1(1)(a) carry?

Mr. Treleaven: Could we have a count on that, please, Mr. Chairman?

The Vice-Chairman: All those in favour? Opposed? Clause 1(1)(a) is carried.

Clause 1(1)(b): All those in favour? Opposed? Clause 1(1)(b) is carried.

Clause 1(1)(c): All those in favour? Opposed? Clause 1(i)(c) is defeated.

Clause 1(1)(d) has been deleted by agreement of the committee.

Clause 1(1)(e): All those in favour? Opposed? Clause 1(1)(e) becomes clause c. Clause 1(1)(f).

Mr. Mitchell: I just want to make sure you said 50 square feet. I would strangle in a room that size; that is eight by six, or just a little bit bigger.

Mr. Brandt: What is that in metric?

Mr. Breithaupt: It is not any bigger.

The Vice-Chairman: Those in favour? Opposed? Clause 1(1)(f) is carried.

Now we are dealing with subsection 1(2) as amended.

Mr. Brandt: On a point of clarification, the amendment relates to the date?

The Vice-Chairman: No. We are calling 1 the total clause, as amended.

Mr. Breithaupt: Mr. Chairman, since it appears we are going to have a much longer time on clause--

The Vice-Chairman: I just want to deal with subsection 1(2). We had an amendment there by the city that proposed September 1. Does someone care to move that amendment?

Mr. Renwick moves that the reference in the subsection to January 1, 1982, be deleted and replaced with September 1, 1982. All those in favour of the subsection as amended? Opposed? Subsection 1(2) is varried.

Section 1, as amended, agreed to.

On section 2:

Mr. Rotenberg: May I make a statement on section 2 which may help proceedings or may confuse them completely? If I give the minister's attitude initially, it might or might not help. Would that be acceptable?

Mr. Breithaupt: I think we could agree that it might or might not help.

Mr. Rotenberg: I want to say again that the general legislation on licensing which is before the House would, of course, provide licensing of amusement arcades. There is no question about it. I, personally, have a very strong conviction about what is before the bylaw because in the municipality I represent this has just been happening.

I have two points. As to the areas within a municipality in which amusement arcades may be permitted, that can now be done by zoning bylaws. It has just been done by the municipality of North York and zoning has been done by the other five municipalities in Metropolitan Toronto. Areas where they can or cannot be done can be done by zoning, which is what the minister recommends.

As for hours of operation, age, location and so on, we are in the ministry now looking at that for general permissive legislation for all municipalities in Ontario. We have a problem and the problem is the new constitution which may or may not allow us to discriminate by age as far as this is concerned. We have not resolved that problem yet.

The minister's position on this would be that this clause not be passed on the understanding that with respect to areas they can do it by zoning, and on age and hours this may be forthcoming in general legislation and will be discussed when we do that general legislation later in the year. That is the ministry's position on general philosophy. On clause by clause there may be some differences. I thought maybe you would wish to know that before we start.

Mr. Cooke: What kind of commitment is that, that general legislation may be coming forth?

Mr. Rotenberg: Mr. Cooke, if--

Mr. Cooke: You do not have to answer that. It is quite clear what you are saying.

Mr. Rotenberg: General legislation is being considered by the ministry to be added as an amendment to Bill 11 which is now before the House. One of the problems we have with it is the problem of the constitution. I may indicate that because of what I have been through in my own municipality I have considerable sympathy for the point of view put forward by Windsor in this situation. If we can do it, I hope we can bring it forward.

Mr. Wrye: What you are saying is that it is the government's intention and that the government is actively attempting to decide whether it can proceed with general legislation and, if so, it will do so through an amendment to Bill 11.

Mr. Rotenberg: It may be going slightly further. The government is actively considering whether or not to bring general legislation in on most of these clauses which would be added to Bill 11, except the one clause, which is the areas in a municipality in which amusement arcades may be permitted, which we think should be done by zoning and should not be done by licensing, again on the principle that if you are going to zone them in or out there should be all the protections of both sides in the Planning Act if you aim to have an Ontario Municipal Board approval and appeal and so on, which you could not have with a licensing procedure.

I do not know how it might be done. Windsor will probably have another bill in the fall. If we do not get general legislation, then I might have some different ideas on the specific legislation. I give that as our position and you may proceed from there.

The Vice-Chairman: This section has obviously generated some differences of opinion within the community itself, so let us hear from the city.

Mr. Rotenberg: Just to clarify this, clause e could be done probably by zoning, and clause f by having a licence for each coin-operated machine device. The principle of the licensing bill is that the fee for licensing can be only either a specific fee or commensurate with the cost of operation. There cannot be a punitive fee for the licence of an amusement arcade.

5:30 p.m.

In other words, you cannot say, as we have, the two exemptions would be taxis and body rubs. You can in effect charge a body rub a punitive fee for a licence; you could not do that for arcades. That is the general legislation. We may, in discussing the act, consider that as well, but general legislation would not provide for it. I do not know if Windsor is thinking about what you might call a punitive fee, which would be maybe \$100 per machine. I do not know if that is what you are considering.

Mr. Kellerman: If I may, Mr. Chairman, could I just briefly present the case for the city? The reason for the bylaw is that two municipalities have attempted licensing of amusement arcades. The city of Windsor bylaw was struck down by the county court judge, and the city of London bylaw was struck down by a High

Court judge for different reasons. The state of the law is extremely confusing, licensing vis-a-vis what are now called amusement arcades.

The general concepts of licensing, the existing general legislation and/or the proposed legislation, is too broad and diffuse to specifically deal with the issues in controlling this particular type of operation. Going through it, on clause 2(3)(a) Mr. Rotenberg has talked about zoning and I would agree with him. The courts have recently ruled that this is a proper consideration for zoning--there may have been some doubt--and I believe the case is about six months old.

The difficulty with zoning is, of course, lawful nonconforming uses. Existing amusement arcades continue.

Clause b, on regulating the hours of operation of amusement arcades; it is one of those never-never questions in licensing: under general licensing powers, is this a proper regulation? In order to answer the question, the city has sought specific authority.

Again, clause c is a matter of--and licensing bylaws are attacked on discrimination under general legislation and c talks to the issue to solve the problem of discrimination.

Again clause d; the problem of discrimination and the interpretation of municipal bylaws.

On clause e: I do not think the general licensing legislation is adequate to cover clause e and I would also think that a zoning bylaw is very difficult to prepare--an intelligible zoning bylaw which is normally based on maps and setting out various zones. It would make it an extremely difficult if not impossible task to amend a municipal bylaw in order to incorporate the intent of clause e.

On clause f there is another principle of licensing that the fee charge cannot be prohibitory and if we do have the power the fee must be reasonable. Otherwise, I am satisfied that the courts could set it aside, depending on what one of these coin-operated machines takes in, but it must have some relationship to the amount of recovery on a coin machine. There is an old Brampton case which has been the settled law in Ontario for at least 60 years.

Because of the present state of the general licensing it is inadequate to control this type of operation. The city of Windsor and the city of London have both tried to control licensing. Both bylaws have been held-- In the case of Windsor the county court judge held it was in excess of authority and that an amusement arcade was not within the head of licensing. I believe the judge in the London case held that there was discrimination in order to set up age and time at which these machines could be operated.

This is why we are here before you. Even in effect the general legislation is approved by the House it will not assist in controlling this type of operation. The same problems will continue as to whether or not they are discriminatory in their operation and that can only be answered by specific legislation.

Mr. Breithaupt: Mr. Chairman, in this situation I too am particularly interested because in a private bill for the city of Kitchener, which would be coming before this committee during this session I would expect, there is an attempt to address this theme as well. Mr. James Wallace, our city solicitor, is here today to see how this matter is going to be dealt with in the Windsor bill.

I understand, from the comments made by the parliamentary assistant, that while he views some of these areas as ones properly for zoning, in effect a section like this is, as I understand it, not acceptable to the ministry because of the prospect of general legislation, which in turn must depend upon resolution of a constitutional concern. Have I got that correct?

Mr. Rotenberg: Except for clause a, which we feel can properly be done by zoning bylaw. In any legislation on licensing we would not have clause a and possibly not clause e in the general legislation. It is b, c, d and f which are the ones which would be the subject of general legislation which we are looking at.

Mr. Mitchell: I have a question for the parliamentary assistant. David, you say that there cannot be a punitive fee, even today?

Mr. Rotenberg: Under the proposed Bill 11, which is before the House, when that comes into force there cannot be punitive fees except taxicabs can have fees in excess and what are called adult entertainment parlours now.

Mr. Mitchell: Because if I recall correctly the municipality I am from got concerned, as apparently the city of Windsor and others did, about these particular operations. In fact, the municipality did set--and I stand to be corrected--a fee quite high to help control them and that is allowed. Is that not allowed to the municipality currently?

Mr. Rotenberg: Under current legislation, yes, you can set a punitive fee. The proposed Bill 11 says you can only do it for specific things.

Mr. Mitchell: I just wanted to clarify that.

Mr. Rotenberg: May I ask Mr. Kellerman a question, Mr. Chairman? On clause a, if your section was passed (inaudible) reading of the general legislation (inaudible) subsection that you could not make that retroactive--it still would be legal nonconformity, even if clause a does pass? You cannot license anything for carrying on business at the time the bylaw was passed. You would not have your retroactivity anyway.

Mr. Treleaven: Is the solicitor still looking it up?

Mr. Chairman, perhaps I can address this in the meantime. Is section 3 of the bill related in the--shall I call it the punitive section--to section 2? Not having the city of Windsor 1977 act in front of me, is section 3--that is what I want to find out--are those the teeth of section 2?

No. The ministry counsel is advising me that that is a separate matter.

Mr. Rotenberg: It is a separate matter for all kinds of licences, not just for pinball machines.

The Vice-Chairman: One question that comes to my mind in all of this, and I think all of us have experienced problems with these arcades in our various constituencies, and that is the question of consistency of legislation on a province-wide base and the prospects of something being done.

Possibly I should address my question to the parliamentary assistant. You have indicated that the legislation that you are contemplating covers a number of the clauses here in subsection 2(3). How far advanced are you in terms of having the amendment to Bill 11 ready?

Mr. Rotenberg: If the ministry and the government, in its wisdom, decides to proceed with the amendment as outlined, it will be ready when the clause by clause of Bill 11 is considered, which will probably be some time during this summer. My anticipation is that Bill 11, as I said before, will go to the House for second reading and be sent to committee. It could be over this summer, it could be in June, depending on how long we need it.

If we get the constitutional problem solved, the amendment will be ready. If the constitutional problem is not solved, we cannot do ages but we still could do hours.

5:40 p.m.

The Vice-Chairman: Then we also have areas that were not going to be covered in the proposed amendments. You indicated clause a would be more appropriately covered by zoning, but then Mr. Kellerman makes the very valid point that a lot of the existing arcades have already established their nonconforming rights.

Mr. Rotenberg: Would Mr. Kellerman now agree that they would still not be able to attack existing legal nonconforming?

Mr. Kellerman: If there is a conflict, is the court going to rule that private legislation takes precedence over general legislation? It is one of those moot points when two pieces of legislation conflict. It has always been my view that private legislation governs and the legislation which was last enacted governs. I am satisfied that I would have an arguable case that a city of Windsor bylaw may well be held to take precedence over the general legislation.

Mr. Breithaupt: That would be covered under clause e as well, as a zoning matter.

Mr. Rotenberg: Yes. The feeling of the ministry on that is quite strong. We do not feel that private legislation should be able to supersede the rights of any person under a zoning bylaw because it is really a land-use problem, not an hours problem.

The operators and the neighbours and everyone else have the right under the Planning Act to make representations or end up at the Ontario Municipal Board. In effect, this is taking you right away from people on both sides of the case, which we do not feel is proper. We do not feel you should be going around the principles of the Planning Act and the zoning bylaws by private legislation under licensing.

The Vice-Chairman: Do the city's representatives have anything further to add? Are there any questions by the committee of the city's representatives?

Mr. Kellerman: My friend Mr. Wallace is also here. He is the city solicitor for Kitchener. He is vitally interested in this bill also and might assist this committee.

Mr. Rotenberg: I think Mr. Dixon of North York is very interested in this too because they have just passed a zoning bylaw.

Mr. Kellerman: We have got 1,000 feet with respect to clause e in order to prohibit the location of these devices.

Mr. Treleaven: Could I clarify that a little bit? Perhaps I have been too long in corporate and estate matters and I would defer to the other solicitors here. But it would have been my thought that I would not characterize this as a private bill as different from government legislation. It is passed by this House. I would not feel that it had any less authority regardless of who brought it, once it was passed by the committee and so on.

I may well be wrong. It would have been my thought, as the solicitor said, that not only would this be the latter bill but this would be specific, on the idea that a specific bill, on specificity, takes priority over a general statute. I would have thought that the authority of the Planning Act to take in all of Ontario would have come secondary to this and, quite frankly, that this would do away with the theory of a catch-all about existing nonconforming uses.-Could someone else help me with this?

Mr. Rotenberg: May I read a section of the Municipal Act? "Notwithstanding subsection 6, a board of commissioners of police or a council should not refuse to grant a licence with respect to the carrying out of any business by reason only of the location of such business where such business was being carried on at such location at the time of the coming into force of the bylaw requiring such licence."

You are giving them the power to pass a bylaw requiring the licence with the location. It says very specifically that they do not have the power not to grant a licence to someone who was there before the bylaw came into force.

I have to take the advice of my solicitor with respect to this.

Mr. Breithaupt: They do not cost a nickel any more.

Mr. Renwick: How about Mr. Wallace getting the Kitchener flavour into this whole discussion?

Mr. Wallace: May I just say that council was quite concerned about the proliferation of amusement arcades. We are talking about amusement arcades. By the definition before you, it is three or more, so we are talking about three or more machines. There was some concern a number of years ago about pinball arcades, which was the old-fashioned kind of thing. I do not know whether it is significant, but during the depression pinballs seemed to be quite popular, and one-armed bandits too, and here we are in what might be called a depression again, only now we have got video machines that seem to be getting very popular.

Mr. Breithaupt: They do not cost a nickel any more, either.

Mr. Wallace: That is right. The problem has been that for a while, although there was some concern expressed in council about pinball machines, it seemed to die down until the video game came in. We have now had a licensing committee set up to review the whole question of pinballs and what video games have done in the community. We looked around and saw that the city of Windsor was in the process of taking some steps and the committee examined what the city of Windsor was doing and said, "We would like that too because we think that will deal with the problems as we see them."

The council endorsed that and specifically instructed me to come here on exactly the same terms as the Windsor act because they think there is a problem. The advertisements have been in the Ontario Gazette and it is coming down the pipeline to you in exactly the same terms.

The question has been made that we can deal with this under zoning, but the problem with zoning is that zoning usually deals with broad categories, residential, commercial, limited commercial, industrial. We are talking about a whole series of uses within the broad term commercial. Courts generally do not like municipalities attempting to define too far within that definition of commercial. For instance, they do not like you to take the position that a sit-down restaurant can be allowed and a stand-up restaurant cannot be. That does not mean to say that municipalities do not try to do that, but I do not think the courts go along with that. They are looking at what does the zoning say--for example, are you selling something retail?--and that is about the extent of it.

If we get into the situation where we accept the argument that zoning will allow us to control this, it is already too late on the main streets of Kitchener and Waterloo. Since the ads have been going in the paper, the amusement arcades have been going up all the way down the street with video games. We also have some stores that have gone out of business and they are being used for video games.

Mr. Treleaven: Mr. Chairman, I am sorry. With respect, we do have the private members' vote. We are already five minutes past the time.

Mr. Cooke: Is there a vote?

Mr. Treleaven: There are two, a bill and a resolution, I believe.

Mr. Crane: Mr. Chairman, we have some people here who have been here since 3:30 who have not had a chance to say one word. They are from Windsor too and we waited a long time for the people from Windsor and the councillors. Now we are even hearing from the city of Kitchener and the city of Thunder Bay. We came here to deal with a bill. We have not had any chance to put our case at all.

The Vice-Chairman: It has been the committee's practice, Mr. Crane, to listen to anyone who is in general support of legislation and also those opposed and we ordinarily take them in the order of those supporting the legislation and those opposed. It is unfortunate that you have been inconvenienced in this way.

Mr. Crane: I do not worry about that. We do not have any time left.

The Vice-Chairman: That is right.

Mr. Crane: When do we come back?

The Vice-Chairman: We are going to have to adjourn for the vote.

Mr. Wrye: Mr. Chairman, there are a number of problems for some of us who are involved in this legislation. In discussing this matter with my friend the member for Windsor-Riverside (Mr. Cooke), I think we would like to hold resumption of the debate on this bill and discussion on this bill until two weeks today, May 20.

The Vice-Chairman: Agreed. We stand adjourned.

5:50 p.m.

Mr. Renwick: Mr. Chairman, just before we go, I am not all that anxious to sit, but Wednesday morning is a sitting day.

Interjection: Not next Wednesday.

Mr. Breithaupt: I am just thinking, Mr. Chairman, whether it is possible for us to schedule sufficient time so if people have to come back, they only have to come back once.

Mr. Crane: Maybe we don't have any rights here; I don't know.

Interjection: Yes, you do. Everyone does.

The Vice-Chairman: Oh, sure. Certainly.

Mr. Crane: I hear Mr. Renwick has already consulted (inaudible) hearing before the--

The Vice-Chairman: Mr. Crane, would you come to a microphone?

Mr. Renwick: Mr. Crane, they are speaking about two weeks.

Mr. Crane: That is May 20. I have a hearing before the Land Compensation Board.

Mr. Breithaupt: What about May 19? What is wrong with May 12?

Interjections.

The Vice-Chairman: How about a week later then, Mr. Crane?

Mr. Breithaupt: May 19?

Mr. Wrye: We have tried that. He is out that whole week.

Mr. Breithaupt: I am sorry. All right.

Mr. Wrye: How about May 27?

Mr. Breithaupt: Do whatever is right.

The justice committee, I would expect, would be dealing with the Ministry of Correctional Services on May 26; at least that is when estimates were to begin. That, of course, can be changed.

I just think we should schedule enough time rather than the hour and a half or two hours on a Thursday which may be uncertain. It might be better for us to schedule a Wednesday if we can because then we have three hours. If it takes an extra little bit of time, we can do that too, sort of thing. It is just an idea.

The Vice-Chairman: Some members of the committee have indicated that Wednesday is not that convenient, the next couple of Wednesdays in any event.

Mr. Crane: Mr. Chairman, Wednesday, June 9, is fine.

Mr. Breithaupt: How would Thursday, May 27, be?

Mr. Crane: May 27? I have an appeal in the Court of Appeal the day before and if it does not finish I would be in the same trap.

Mr. Wrye: How about Wednesday, June 9?

Mr. Crane: Wednesday, June 9, is perfect for me, assuming it is okay with everyone else.

The Vice-Chairman: Wednesday, June 9; is that agreeable to the committee?

Mr. Wrye: At 10 a.m.

Mr. Renwick: Just so long as we are not dealing with the North York bill at the same time.

The committee adjourned at 5:52 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CITY OF TORONTO ACT

WEDNESDAY JUNE 2, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Eves
Philip, E. T. (Etobicoke NDP) for Mr. Renwick
Ruprecht, T. (Parkdale L) for Mr. Breithaupt

Also taking part:

Bryden, M. H. (Beaches-Woodbine NDP)
Johnston, R. F. (Scarborough West NDP)
Newman, B. (Windsor-Walkerville L)

Clerk: Arnott, D.

Staff: Revell, D. L., Legislative Counsel

From the Ministry of Municipal Affairs and Housing:
Donaldson, B. T., Senior Policy Adviser

Witnesses:

Hunt, D., Executive Member, Federation of Metro Tenants
Associations

From the City of Toronto:

Eggleton, A., Mayor
Fram, M., City Solicitor
Johnston, A., Alderman, Ward 11
Sheppard, P., Alderman, Ward 9
Tomlinson, P., Program Manager, Policy Section, City of Toronto
Planning and Development Department
White, D., Alderman, Ward 1

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, June 2, 1982

The committee met at 10:10 a.m. in room 151.

CITY OF TORONTO ACT

Consideration of Bill Prl3, An Act respecting the City of Toronto.

Mr. Chairman: I see a quorum. We are here this morning to hear delegations on Bill Prl3, an Act respecting the City of Toronto. I believe the clerk has distributed three different exhibits that we have received, from the city of Toronto, from the board of trade and from the Housing and Urban Development Association of Canada. I believe all members have copies of those.

For the members of the committee, the TV camera will not be here the entire time; it will be a fairly short time. If it is jamming your heads or bouncing off your bald spots, it will not be more than a short time doing so.

Mr. Philip: On a point of order, Mr. Chairman: This is a pretty important bill and we have a very important delegation before us. I would suggest that we not proceed until either the minister or the parliamentary assistant to the minister is here, in other words those two people who can give policy statements.

Mr. Chairman: Mr. Philip, I believe it was at your request that I did correspond with the minister and request his presence. Am I not correct in saying it was your suggestion?

Mr. Philip: It was at my request, yes.

Mr. Chairman: I did so do. He received it yesterday morning and he spoke to me last night. He is in cabinet and unable to be here. His parliamentary assistant is in the standing committee on general government right now on Bill 159 and he cannot be here. However, we do have observers, if you will. Mr. Donaldson and, later probably Mrs. Maitland Carter, will be here as observers for the ministry. At this time neither the minister nor his parliamentary assistant is available, according to my understanding.

Mr. Philip: Is it your understanding that either the minister or the parliamentary assistant to the minister will be here at some time during our deliberations during the next three days?

Mr. Chairman: I am so advised.

Mr. Philip: When will they be here?

Mr. Chairman: I do not have any information as to that.

Mr. Philip: Do we have any information?

Mr. Donaldson: He told me tomorrow and Friday.

Mr. Philip: It is very interesting that the minister or the parliamentary assistant is going to be here on the days on which we have the Toronto Real Estate Board and the Urban Development Institute, but when the major--

Mr. Chairman: Mr. Philip, is this a matter of order?

Mr. Philip: It is a matter of interest.

Mr. Chairman: It is really not a point of order as to the advent of the various witnesses.

Mr. Philip: When the important groups that are in favour of this bill, namely, the Federation of Metro Tenants and the city of Toronto, are here, they are absent.

Mr. Chairman: Mr. Philip, you are out of order. That is not a point of order. Your first part of it was fair enough, to inquire as to the minister and his parliamentary assistant. The second is opinion; it is certainly not a point of order.

Mr. Spensieri: The short answer, Mr. Chairman, is that Ms. Fish is here.

Mr. Philip: Ms. Fish is not yet a parliamentary assistant and therefore cannot answer policy questions.

Mr. Chairman: No. Ms. Fish is here as a member of the committee today and also she is acting as the presenter or introducer of the bill. I think we will carry on, the chair having ruled that the latter part was certainly not a point of order. Having been answered, Ms. Fish, would you carry on and introduce the bill?

Ms. Fish: Yes, I certainly will, Mr. Chairman. Would it be appropriate to ask first for a clarification on a point of procedure?

Mr. Chairman: Yes.

Ms. Fish: Specifically, I have been approached, as I believe the clerk of the committee has, by groups that were unable to be accommodated on the initial hearing day and which had expressed considerable, I might say, support for the bill--those are the ones who have been in touch with me. They were very eager to come before the committee and express their views. I am simply wondering whether there have been any additional hearing days scheduled to accommodate such requests.

Mr. Chairman: To go back into the history, Ms. Fish, originally it was looked at as June 2, 3 and 4 for this bill. It was even suggested by Mr. Philip that perhaps the representations could be made on the first two days and maybe we could get to clause by clause on June 4. I was not personally very optimistic of that and I think perhaps it is well that I was not optimistic because we have not only June 2, 3 and 4 filled in, but we also have, you will recall, June 16. We have a semi-open day there and we have several people who wish to be heard on that day.

Mr. Philip was in touch with the Legislative Library, if I am not mistaken, to gather as many names of people who wished to appear before us as possible. He was going to relay those to the clerk of the committee, and he did. I believe Mr. Renwick said we would then write to them and find out now many wished to simply write back to us by correspondence and those who wished to appear before us. Of course, with less than a week's time, that became impractical. I believe Mr. Philip co-operated and got a list to the clerk as quickly as possible. About last Friday the clerk got on the telephone and followed all of them up by correspondence and also by telephone because that was the only practical way of getting them here.

We have heard from various people and we have put in various aldermen today at 15-minute slots to try to get as many in front of us as we can. I suppose if we have more than can be adequately fitted in by June 16, then I must assume that the committee will take a look at it and ask itself when it can reschedule more time for more people. I have no thoughts beyond these three days and the partial day of June 16.

Ms. Fish: I appreciate your taking the time to indicate that to me. I did ask that question, as committee members will appreciate, as I think the bill is an extremely important one, and providing an opportunity for groups and individuals who want to speak to the matter is extremely important.

Let me move then to introduce the bill. My remarks will be very brief in view of the fact that we have a very large number of people who wish to be addressing the committee today, beginning with delegations from the city of Toronto. Let me simply say that this bill derives from a very real concern and a very serious problem that has evidenced itself presently within the city of Toronto and is therefore the subject of a private bill for the city, but in my view it is a problem that may not simply be confined to the city of Toronto but may also be a problem that will be raising its head elsewhere in Metro as well. I do not speak for other municipalities in the province.

That difficulty, that concern, very simply put, is a concern about a loss, both currently under way and projected,--and I am sure that some of the more specific detail on that will come forward with some of the witnesses--of reasonably and moderately priced, stable, well-constructed, in good condition, rental accommodation in the city of Toronto. We are looking within the city at a pattern of development over the last couple of generations that, among other things, has seen the construction and occupancy of rental accommodation that has occurred in a fashion that provides multiple occupancy units in buildings that we would now today describe--although they were not perhaps described as such when they were initially developed--as being fairly small buildings, accommodating anything from 10 or 11 or 12 units all the way up to of a couple of hundred units.

They tend to be older buildings with larger units. They are buildings whose population has been generally stable, with tenants

who have truly viewed their apartments, their units, as their homes. Even though they have been in a rental situation, those tenants very often have been residents in those buildings and in that community for years and years.

10:20 a.m.

As long-term residents in a community, particularly in older rental accommodation that is of a more modest price, those residents have put down their roots in the community. They are accustomed to the area, with friends, with shops, with community centres and facilities, with a pattern of life.

Clearly, the particular bill before us obviously cannot answer all of the problems and concerns that would confront an individual tenant or a group of tenants presently living in those conditions when faced with an owner who proposes to demolish and redevelop that property. Those tenants have expressed concerns about finding suitable alternative accommodation.

The elements in finding suitable alternative accommodation tend to be many of the things one would usually expect. The first and foremost is price. When buildings are under threat of demolition or redevelopment, it is particularly important that the city staff be aware of it when they are dealing with an older population.

These are people, who are now senior citizens or who will soon be seniors, are on limited incomes and their prospects for increased incomes through a working life or what not are not there. Many are at the close of their working life and are looking to a retirement period. So availability in terms of price is one very important aspect.

The second important aspect is the suitability of the size of the accommodation, its relationship to grade and its various attributes. That may be of particular concern to people, particularly older people, who might be perhaps less mobile than others.

The location is also an important factor. Location speaks in part to the roots people have developed within their community, to the services, to the networks. Availability of transit and availability of shopping are some of the elements that go into making a neighbourhood comfortable, one that is manageable for people who wish to live independently, particularly if they are older, and carry on.

The proposal before the committee in this bill is a proposal to extend existing authority that has been given to the city of Toronto in control of the demolition of residential units. Under the existing legislation, the city of Toronto has the right to refuse a demolition permit except in a case where the land owner holds a valid building permit. Under those circumstances and under the existing legislation, the city must issue the building permit.

This request for legislation is a request to provide an area for discretion, an area of fine-tuning. It is an opportunity for the

council, on behalf of all the residents of the city, to examine what is occurring in the availability of residential accommodation in the city, notably the availability of rental accommodation, and notably within that the availability of more moderate cost rental accommodation.

When dealing with proposals to demolish, particularly moderate cost rental, you have an opportunity to consider what has occurred in the city and where the production of new housing is coming on stream, its form, its location, its price and its suitability. This is not only from the perspective of the individual tenants who are affected by the application for demolition, but also from the perspective of what is occurring in the city as a whole.

I add that thought because I believe it to be extremely important. We have a request from a council that is mandated to concern itself with the whole of the fabric of the city, not simply with one sector. It should examine through its many vehicles and tools the question of the changes occurring in the city, the physical form changes, the changes in the availability of housing accommodation and, through those, the changes occurring in the population that is resident within the city of Toronto.

It is extremely important that the council have the opportunity through its many vehicles to ensure that the city remains what it is renowned throughout the world now for being--a livable city. It should remain a city that accommodates people of all ages, of all household sizes and of all incomes.

The city of Toronto and this area, one of the foremost in Canada, is not known through the world, as the city of New York is, for being an area available only to the very rich and the very poor. It is instead a city known for its variety and choice and for the happy living together of all kinds of people. They have all contributed to making a city, as I said before, as livable, as comfortable, as dynamic, as healthy, and indeed as economically strong as this municipality is.

This requested legislation, which will be described in greater detail in terms of its operation, provides an opportunity for the council to examine proposals, particularly demolition, with a view to ensuring the city continues to be what it has been to this date, a place where all of our people can live happily and continue to keep the city great.

With those few introductory remarks, Mr. Chairman, I will turn the further more detailed discussion over to the witnesses who have come up from the city to speak to the bill more specifically.

Mr. Philip: Mr. Chairman, before we do that, as is customary, it is appropriate for a member of this committee to ask a mover of a bill whether or not he or she endorses it and will be voting for the bill or is merely introducing it.

Ms. Fish: If that is a question to me, I would be pleased to indicate, as I hoped I had in my remarks, that I endorse this bill. I support it and I am certainly not providing a simple

courtesy introduction. I am introducing and sponsoring this bill as someone who represents a riding in the city of Toronto and as someone who spent several years on city council grappling with many of the issues that has led the council to request the form of this legislation.

Mr. Philip: Can I take it then, that the member will be voting for this bill and is therefore disassociating--

Mr. Chairman: No, Mr. Philip, you are taking too wide a swing here. I do not think it is valid to be questioning how a member will be voting on a bill prior to hearing any representation from witnesses. Plus, as a relatively new chairman, I really question whether one member has the right to cross-examine another member as to his or her intentions.

Mr. Philip: I am not cross-examining another member. I am cross-examining the person who is introducing the bill and that is perfectly appropriate. Your predecessor as chairman allowed that on numerous occasions.

Mr. Chairman: He being the same as the present person to whom I am speaking.

Mr. Philip: Be that as it may, the decision to allow that was perfectly appropriate and perfectly parliamentary.

Mr. Chairman: Yes, but failing finding anything in the standing orders to this effect, I will discontinue the questioning here and ask his worship the mayor to lead the first group in front of us. The series of witnesses are Mayor Arthur Eggleton, Alderman Anne Johnston and Alderman Michael Gee of the city of Toronto and Michael Fram, the solicitor. They are all part of the same delegation. Is that correct?

Alderman Johnston: No. I will be appearing tomorrow with the tenants.

Mr. Chairman: Your Worship, will you introduce the group with you, please?

10:30 a.m.

Mayor Eggleton: The people at the table with me are Michael Fram, the deputy city solicitor, who is perhaps no stranger to many of you, having appeared so many times at committees; Peter Tomlinson, on my right, is from the planning and development department. As you have indicated, there are other members of council who may wish to make presentations. Some of them are here: Alderman Johnston, Alderman Sheppard and Alderman White. The commissioner of housing and other civic staff are here as well. First of all, I want to thank you for this opportunity to speak to the bill Ms. Fish has sponsored and to thank her for her supportive remarks.

Over the past three years virtually no private rental housing has been built in the city of Toronto. This has been the bleak

reality, despite provincial and federal programs designed to stimulate the rental sector. The Ontario rental construction loan program, which may have been quite successful in other parts of the province, was not in the city of Toronto itself. The Canada rental supply program and the multiple unit residential building tax shelter, known as MURB, all these programs, whatever their effects elsewhere, have simply not worked in Toronto. Rental supply programs will have to consider the much higher land costs that exist in the city of Toronto if they are to work.

It is gratifying to learn that the province is working on new approaches to the rental housing problem. I speak specifically of Mr. Bennett's initiatives with respect to Challenge 2000. When the details are finalized, perhaps we will once again see private rental housing developed in the city.

However, it would be several years at least before we could count on any appreciable effect on our rental vacancy rate, even if the new programs do work in the city, and that would be a bit of a change since the past ones have not. At best, in the near to medium term, the city can hope only to hold on to its existing rental stock. To us, the existing rental stock is a precious resource, not be squandered away.

The social need for rental housing is as great as ever. Recent reports of an upturn in the vacancy rate turn out to be a statistical illusion due to the inclusion of luxury condominiums on the rental market for the first time and at rents over \$1,000 per month. Even counting the luxury condominiums, which cannot get into the hands of low moderate income people, Canada Mortgage and Housing Corp. still reports the vacancy rate at less than one per cent, 0.6 per cent to be exact, in the city of Toronto. Given this critical and abnormal circumstance, demolition of rental apartment buildings in sound condition cannot be justified.

Under normal circumstances, with an equilibrium vacancy rate and development of new rental units occurring, apartment demolitions would have to be accepted as they were in the past. We would recognize such demolitions as a consequence of changing land use, although obviously upsetting to the tenants involved. However, under today's conditions--no vacancy conditions--no purpose is served by permitting apartment demolitions except perhaps to maximize the return to investment in certain properties.

Such demolitions are not required to permit development of new condominiums. Thousands of condominium units have been developed in this city on vacant and underutilized commercial sites. There have been a number of condominium developments on the waterfront area, so there is lots of room to put up condominiums without tearing down rental buildings.

In its enactment of rent review legislation, the provincial government has accepted the view that people's housing needs must take priority over maximum returns to property investment. Control of apartment demolitions is justified on the basis of this same philosophy. Provincial rent review provides for reasonable and fair return on landlords' investments, which will still be realized with

demolition control in place. Demolition control proposals ask landlords to forego potential greater profits from redevelopment, just as rent review asks that they forego charging what the market will bear.

At present, the owner of any residential building in the city is entitled to a demolition permit as of right, as long as he undertakes to construct a replacement building permitted by the zoning. Ms. Fish has touched on this. I think it is section 45 of the Planning Act that governs that particular provision.

For a few months last year we had a bylaw on the books limiting the size of new buildings on sites now occupied by apartment houses. City council enacted this bylaw in an attempt to contain demolition pressures. Unfortunately, however, the courts ruled that we had no power to implement such a measure. As a consequence, not only are we obliged to issue demolition permits where proposed buildings conform to zoning, but we are also denied the power to amend our zoning for the purposes of making demolition less likely. So this is why I have come before you today.

It is the provincial Planning Act which prevents control of apartment demolitions, and it will require changes to provincial legislation if we are to have demolition control in the city. What is proposed in Prl3 is enabling legislation, permitting city council to withhold demolition permits for buildings containing six or more dwelling units where such buildings are in sound condition. We have provided for an exception in the case of underutilized sites so that desirable development will not be impeded. This exception requires us to issue demolition permits as we do now in cases where the existing building has less than half the residential density permitted in the official plan. I should note that 95 per cent of apartment buildings in the city are over the 50 per cent of permitted density and thus would be protected by this bill.

We have requested that apartment demolition control remain in place for the duration of provincial rent review. This provision reflects our confidence that the province will not lift rent review before the present crisis in rental housing is substantially resolved.

To give you an indication of the magnitude of the pressure for demolition of these rental apartments, during the period from 1976 to 1980 private developers demolished only three rental apartment houses containing just over 90 apartment units in the city. Since 1980, however, demolitions proposed, under way or completed have involved at least 24 buildings containing just under 900 units. As you can see, the four-year period involving 90 units went up to almost tenfold of that in just a short period of time since the beginning of the 1980s.

In the majority of situations proposals have involved redevelopment to provide luxury condominium apartments. In several cases, however, proposals to replace rental apartment houses with luxury townhouses have been submitted. While the market for luxury condominium apartments appears to be less buoyant, as we all know now, than during 1980 and 1981, the demand for townhouses still

appears to be quite strong and is potentially larger than the market for condominium apartments. Thus, the recent decline in sales of condominiums. They have only a limited impact on demolition pressures respecting rental apartment house sites.

I have noted that among the province's recent housing policy announcements was consideration of a program to provide--I am not sure whether it is really interest-free or interest-reduced loans. This is the rent-hab program, which we still do not have all of the details of. The money would be used to upgrade existing apartment buildings subject to rent review. That is the idea behind it. Although we have no details of such program as yet, I would be very surprised if it is significantly limited demolition pressures. I just do not think it is going to make that great a difference.

To compensate for the potential gains for demolition and redevelopment, a deep subsidy to increase landlords' profits would be required. I am not at all convinced that this would be a desirable use of public funds and I would doubt the provincial government is convinced of this either. There are many useful roles for an interest-free or an interest-reduced loan program, but limiting demolitions is very unlikely to be one of them.

In conclusion, preservation of moderately priced rental housing is a paramount housing objective of the city of Toronto. To this end, this city has taken the available steps within its own jurisdiction. Now it is up to the province to take the further step which is so urgently required and requested. Adoption by the Legislature of Prl3 will help to prevent tragic dislocation and disruption of many neighbourhoods. These neighbourhoods contribute in a major way to the richness and diversity of our social fabric. We invite you to join with us in helping to preserve the human values which have made Toronto so widely admired around the world.

Mr. Chairman: Thank you, Mayor Eggleton. Is there anyone else in the group who wishes to speak?

Mayor Eggleton: Mr. Fram wants to speak to some technical points respecting the requested legislation.

10:40 a.m.

Mr. Fram: Thank you, Mr. Chairman. I certainly do not intend to speak to the policy of the bill. There are many who will speak for and against it and this is one time that I need not take on that burden. I would like to draw your attention to Bill Prl3 and make just a very few brief remarks. Distributed to every member is our little brief signed by Mr. Callow, and it sets out what the legislation does.

Basically, there are a couple of points, and if I deal with them now, it may shorten things up later on. One is the section that contemplates an application under section 45 of the Planning Act for a demolition permit from the council. It is an instrument that the council will have when a builder who already has a permit comes before it. Subsection 45(6) requires that a permit be issued, although it can be made subject to two conditions--and they are quite stern conditions--that are set out in section 45 itself.

I am not suggesting that Mr. Revell as the legislative counsel has anything favourable to say about the bill, but with his assistance it has been pared down to an instrument which I think is clear and understandable and says exactly what it intends to say. The first point I note is that I have used the words "rent control." Mr. Revell would have liked me to use "rent review" because "rent review" is the right name. I preferred the words "rent control" in the bill because there are permutations and combinations.

I can remember after the last war when rent control changed into various forms and it came filtering down practically to the municipalities. I notice even Hansard calls it rent control. What I am suggesting is that any form that is mandatory and which regulates rent in some way, this legislation is to last as long as that. Even though certain sections of the Residential Tenancies Act are proclaimed in force and so forth, this will still carry on. That is the idea of it.

The other point is we have used a definition of dwelling unit which is from our zoning bylaw. That is in subsection 1(1). As a matter of fact, that section is far narrower actually than the definition in section 45 which is a very wide definition. It is done because it ties in with an exception to this rule that is contained in the legislation, because the official plan for the city of Toronto basically deals with dwelling units, and in order to properly calculate the residential density, 50 per cent of the residential density which the council may by bylaw permit under the official plan, you really have to have apples and apples.

You have to start with a definition of dwelling units because the official plan itself is talking about units per hectare and it gets very complicated. Mr. Tomlinson could lead you through all this, but there is mixing formula for mixed districts and so forth. If you start with your basic dwelling unit, you then have the unit which you can use as a tool for determining which is a building that is built to a residential density of 50 per cent or less of the maximum residential density which the council may, by bylaw, permit under the official plan of the city of Toronto.

That leads me to that point, and that might cause some confusion, but if you look at the city's official plan you will notice that it says council may, by bylaw, permit residential densities thus and so. Council may permit, by bylaw, commercial densities thus and so if certain conditions are fulfilled. In the central core council may pass bylaws.

The purpose of saying, "which council may, by bylaw, permit" and not saying "of the maximum residential density permissible under the zoning bylaw" is because the council may, by bylaw, permit under the official plan for the city of Toronto far greater than the zoning bylaw. This is a factor which, as the mayor points out, does not capture a great many apartment buildings. Whether the site is underutilized or whether it is underdeveloped, you have a better measuring stick to get an exemption than you have if we referred to the zoning bylaw.

I think that is really all I want to say at the present time. The effect of it is that it excludes clause 6(b) in these cases. There is an appeal provision. I think the appeal provision is a wise one because not only does it refer to going to the Ontario Municipal Board, setting that out clearly in subsection 4, but the intent here is not to have the fairly woolly one of section 45, where it would take you a long time to get to the Ontario Municipal Board. Here, in this case, the idea is that you can get there fairly promptly, and there are time limits so you can actually get to the Ontario Municipal Board.

There is plenty of jurisprudence which permits the Ontario Municipal Board to deal with cases that come from a refusal or on appeal from the council. There are these exceptions that they have to consider. They have to consider other factors, like natural justice and undue hardship. There is a very extensive case law that is built up under--it used to be section 35; I guess it is now section 39 under the Planning Act.

Having said that, I think the important part in the appeal section is the word "neglect." For those people who have a distrust of council and who think they may hold it up--I do not have such a distrust--the word "neglect" is there and they can go to the Ontario Municipal Board. Those are very short remarks, but I wanted to make them at the outset so that I could perhaps clear the air on these. I will be available, of course, for any questions as we proceed.

Mr. Philip: Thank you for an interesting brief. I gather from reading the press clippings that the proposal for this bill passed by a fairly substantial vote of your council. Only five members voted against it. Is that correct?

Mayor Eggleton: There were 16 in favour and five opposed.

Mr. Philip: So this represents very clearly a decisive and fairly conclusive vote by your council?

Mayor Eggleton: Yes, sir.

Mr. Philip: I would like to ask you a few questions concerning some comments that have already been made on the bill by some of the critics of the bill. Attorney General Roy McMurtry has called this bill grossly unjust and unfair, and his colleague, Alderman Gee, has said that property values of every building in the city over six units would be decimated by this bill. Do you agree that that is likely to happen?

Mayor Eggleton: No. I do not believe that that is the case at all. Under existing rent review legislation we are asking the owners of these buildings to forego the maximum profit they may be able to obtain by charging whatever they like. This bill does really no more than that. It is part, as I indicated in my remarks, of the same philosophy.

Mr. Philip: Alderman Gee calls it expropriation without compensation. Do you feel that this is a form of expropriating property?

Mayor Eggleton: No. I do not believe that at all. The remarks I have just made with respect to its similarity in philosophy with rent review, I think, very much apply in that case. We are not suggesting that they should be losing money or suggesting that they cannot make any money out of these buildings. We are just asking that they forego maximum profit. That is really what is at stake here. It is not that they are losing a bundle of money. It is that they want to make a great deal more money. Under the current housing crisis, we are asking them to forego that, just as the rent review legislation of the province presently in existence asks them to forego that. We are limiting it, as I say, to the time in which the rent review legislation would be in effect, which we understand would likely be in effect as long as the current housing crisis, the no-vacancy situation, exists.

Mr. Philip: You do admit that it may have some effect on the profits of certain developers and you see it, as I understand it, as a form of regulation. Would you see this, philosophically, as any different than, say, regulations that might be introduced by the commodities exchange or by the stock exchange that would affect the way in which stock might go up and down?

Mayor Eggleton: No. I do not believe it to be an unreasonable restriction on the owners. As I say, they would still be able to make the same kind of profit they do now. There is nothing in here that would suggest that they should make less profit. What we would be doing is regulating them under the current housing crisis circumstances from making a much greater profit. As I say, I very much equate that with the rent review legislation and perhaps it has other similarities to other legislation that you are referring to.

Mr. Philip: So you would see no great difference, philosophically, then in this as compared to regulation by the commodities exchange or by the Ontario Securities Commission then.

Mayor Eggleton: No.

Mr. Philip: In an interesting letter from Mayor Gus Harris to Mr. Davis, he points out figures that many of us are familiar with. There are about 14,000 applications for rent-geared-to-income units in Metro Toronto and there is just one vacant apartment unit in Metro for every 333 occupied. We know also from other figures that the turnover rate in geared-to-income housing has declined in each of the last three years. What you are saying is that there is a housing crisis, and until that housing crisis changes you would have this as a temporary form of regulation.

Mayor Eggleton: Yes. Quite correct.

Mr. Philip: Mayor Mel Lastman has challenged forums in dealing with a motion before his own council that this kind of thing would stop the redevelopment in the name of preserving cheap units for low and middle income residents. In the long run, basically he indicates that they would be creating "the breeding grounds for the slums of tomorrow." Do you think that you are here trying to breed slums for tomorrow?

Mayor Eggleton: Absolutely not. We have a fairly strong, tough bylaw with respect to housing standards. We have a very strong and competent inspection staff. We intend to continue, as we have in the past, to keep the housing stock of this city to a standard we can be proud of. We have no intention to allow that situation to exist.

When I talk about the under 900 units in 24 buildings, most of those buildings are in pretty sound condition. It is not a question of their being run down into slums and people wanting to get rid of them for other accommodation. There are some maintenance problems in some of them, as they let the maintenance slip a bit as they are hoping for demolition in the not-too-distant future, but basically those buildings are in sound condition.

On the question of constructing rental accommodation being a detriment to the private industry, as I understood what you were getting at in another part of your question, there is no private rental accommodation being built now in the city of Toronto, as I indicated in my opening remarks. We are trying to save what we have.

Mr. Philip: Would you not agree that under the City of Toronto Act you have considerable powers, perhaps powers that Mayor Lastman does not have because he has to work under the Planning Act, in keeping buildings up to standards? You have powers that no other municipality has to force landlords to keep buildings from becoming slums?

Mayor Eggleton: I cannot compare readily to other municipalities, but certainly within our own municipality I believe we do have the means of preventing that from happening.

Mr. Philip: So the issue of creating slums is really a red herring that you would consider to be misleading, would you?

Mayor Eggleton: Yes. There is also a provision in the bill--I draw it to your attention--that if a building is unsafe within the meaning of the building code, that could be exempted from this.

Mr. Philip: The board of trade has claimed that this bill would render planning controls complex, unintelligible and misleading and would condone procedures that would be open to abuse. Let us deal with the first one--and I will be asking them this question, of course, as well. Do you see that this would in any way make planning controls more complex or difficult?

Mayor Eggleton: It is a fairly simple bill. It helps us to keep low, moderate-income housing in the city, which is a prime planning objective of ours. I just do not agree with that position.

Mr. Philip: Some interesting studies conducted by Ralph Nader's organization in the United States show that the people who are usually most affected by the two forms of conversion, namely, conversion by demolition and conversion by straight conversion to condominium or other use, are the elderly and the poor. In your experience of the 20-odd buildings that we know of now, what

percentage of the population in those buildings would be what we would consider in rough terms elderly and poor? Do you have any handle on that?

Mayor Eggleton: There are three buildings that have been receiving much public attention with respect to this matter. They are on Eglinton Avenue West, 790 to 840. Those three buildings involve 133 units, and the buildings are in sound condition, I might add. The owner wants to tear them down to put up luxury condominiums. The people who live there now would not be able in the vast majority of cases to afford to move back into the luxury condominium accommodation that would be provided, so they would be dislocated. A great number of them are senior citizens.

We did a tenant study in that area to get a profile of the people involved and found there to be a great number of seniors and people on fixed and modest incomes. Perhaps Mr. Tomlinson, who is responsible for the study, could further amplify.

Mr. Tomlinson: We did find that in the area of north Toronto that the study covered, Mr. Philip, the concentration of seniors, particularly seniors on fixed incomes, was considerably higher than the percentage of seniors in the tenant population in Metro generally. We could get the exact figures and make them available to your committee.

Alderman Johnston: Mr. Chairman, I will be bringing that information forward tomorrow.

Mr. Chairman: Thank you.

11 a.m.

Mr. Philip: When Mrs. Johnston and I and a few other people met with some of these people, I believe in her area, my impression was that many of them, even if they could afford to move, were part of a particular social and ethnic group, that they belonged to certain clubs or to certain church groups or, in this case, to certain synagogues in that area and therefore would have considerable culture shock or culture alienation were they to be forced to move to, say, Rexdale, the area that I represent, or to Scarborough or somewhere else where they might not have those kinds of clubs and institutions. Would you agree that would also be the case, so that even if they could afford to move elsewhere, there would be considerable difficulty in doing so in terms of their doing those things that make life worth while?

Alderman Johnston: May I answer, Mr. Chairman, since I am not speaking today but I am speaking tomorrow? I would like to.

Mr. Chairman: I think we can have liberal enough rules here that we can do that. I do not think anybody in the committee objects to Mrs. Johnston assisting us today as well as tomorrow.

Mr. McLean: Mr. Chairman, I do not think personally that this is warranted if she is to be here tomorrow. She may be just repeating it all over. You want to have this done in three days, do you not?

Mr. Chairman: I might point out to the members of the committee that she was scheduled with Alderman Gee to be part of the city of Toronto delegation today. I think the chair is going to rule that if she wishes to put herself back into this delegation today as part of the assistive arm thereof she could then appear tomorrow in a different capacity. Any objections to that? Thank you. Mrs. Johnston, would you carry on.

Alderman Johnston: Yes. I will. I will be bringing forward tomorrow a planning report which is being printed today and which demonstrates that an enormous number of these people are elderly and single. They are widows and women mostly. They are people who have lived in that area for a considerable length of time. They are people who have strong links with the churches, with the synagogues, with the clubs in the area. They have their own social support systems.

They are people who are told that if their building comes down, they can go and live in Oshawa. They are people who will be severely affected by the shock of it, if it comes down, and they are people who believed they were entitled to some security and some peace in their older years. They are people who are not used to being political. They are offended that their desire to be vocal in support of what they consider to be their own homes is taken to be hostile to certain political representatives of the area. In other words, they are just like the rest of us. If our home were being threatened, we would surely fight to keep it. They are certainly people who cannot--some can, but most cannot--afford at this point the time and the cost of relocation. They should be allowed to stay there.

Mr. Philip: I have one last question.

Mayor Eggleton: Mr. Chairman, if I could just add further to that point, I also have had discussions with residents in that area and have taken an interest in their particular plight. Yes, they do have their roots in that area. Let me say that even if alternate accommodation could be found for them, first, I doubt it would be any where near that community; it would be most difficult for them find something.

Secondly, it certainly does nothing in terms of the ability to help our rental crisis. It lessens the stock we have in the community. If those buildings go, then I think we are starting a run on the banks, so to speak, because I see a lot of others which are sitting and waiting. They are part of that just under 900 units, those 24 buildings. If those buildings go on Eglinton, others are going to follow and it will make the housing crisis that much worse.

Mr. Philip: I have an interesting--

Mr. Chairman: Excuse me, Mr. Philip. I apologize for interrupting. I have a couple of things to say. I have scheduled the city until 12 o'clock, but I do not think we can go further than that with the city as such in fairness to the other people coming thereafter. Might I also point out that I have four more speakers and Mr. Ruprecht wishes to take a supplementary on you.

Mr. Philip: May I just ask one last question then?

Mr. Chairman: Yes. Make it fairly short, if you would.

Mr. Philip: I wonder if I can give you the details of a case that I got that is not in the city of Toronto but is from Mayor Gus Harris in Scarborough.

He tells of a 70-year-old retired woman who lives with a friend in one of the older buildings. She is faced with eviction after 45 years in that building and she says that she simply cannot afford to move in to the luxury buildings in that area.

Is that typical of the kind of cases you are running into in the city of Toronto?

Mayor Eggleton: Yes, there are a good many of them in that circumstance. Just going through the trauma of trying to find something else and going through a dislocation after a great many years in a particular building or community is something very severe that they are facing. It is something we have to take into consideration.

Mr. Philip: Is it not fair to say that many of those will end up in government-subsidized buildings, namely, in the Metro Toronto housing authority senior citizens' buildings, and therefore will be an extra cost to the taxpayer?

Mayor Eggleton: I would think they could, provided we have the space. We have a waiting list and this would just add to that.

Mr. Chairman: Mr. McLean, you are the next scheduled speaker. Do you agree to Mr. Ruprecht having a supplementary ahead of you?

Mr. McLean: Yes.

Mr. Ruprecht: Mr. Mayor, you had indicated earlier that you see this enabling legislation as a temporary measure. When do you see these types of controls coming off? I refer especially to your presentation on page 5 where you say, "We have requested that apartment demolition control remain in place for the duration of provincial rent review."

What is not clear to me is this whole business of a rent review. I am wondering whether you could clarify this in conjunction with the idea of it being a temporary measure.

Mayor Eggleton: We are operating on the assumption that rent review will be in place as long as the housing shortage crisis exists. This is very directly related to that. We are trying to save existing rental accommodation until we have better circumstances, say, a vacancy rate that allows market conditions to take over so that people will have some choice in terms of rental accommodation.

The current situation depends on our doing something to save the existing stock. We have said, "Let us have this in existence as long as rent review legislation is in existence, assuming that rent review legislation will be in existence as long as the crisis circumstances exist."

Mr. McLean: I am curious to know why the six-unit proposal was put in rather than 10, 20, or 30. What is the reasoning for that?

Mr. Tomlinson: The legislation is not designed to reach down into the spectrum of small converted dwelling houses, perhaps a house converted into three or four flats, and therefore it should not be less than six.

A number greater than six as the threshold would have left certain smaller buildings unprotected that might have 10 or 12 units that we were aware of, and therefore six was chosen. The threshold level between small multiples and large multiples also happens to be in the assessment procedures of the province, and we thought it was appropriate to link up with the distinction that already existed.

Mayor Eggleton: If I might add to that, when I spoke of 24 buildings and just under 900 units as being threatened, they are all larger; in fact, most of them are over 20 units.

Mr. McLean: I wondered why you had it so low.

Mayor Eggleton: Most of them are over 20, but there are some that are between six and 20.

11:10 a.m.

Mr. MacQuarrie: I take it that the city has been sensitive to this pressure for demolition for something more than a year. Is that correct?

Mayor Eggleton: Yes. We have been concerned about it for some time. As I say, we did try to pass bylaws to accomplish this same end, but they have been ruled out in court.

Mr. MacQuarrie: What sort of bylaws? Is the one relating to site size of new construction the only bylaw you tried?

Mayor Eggleton: There was one other bylaw that is really along the same lines of the legislation being requested. Again, that has been held to be invalid.

Mr. MacQuarrie: I can see your desire to preserve existing neighbourhoods and the existing range of housing stock within the neighbourhoods. I just wonder how far you have exploited the provisions of the Planning Act and other legislation that may be available to the city to accomplish these ends--things like floor space index of residential units.

The traditional mechanism to maintain the type of community that you want has been zoning. I wonder just how far into the zoning aspect you people have delved.

Mayor Eggleton: Believe me, sir, we have tried everything. With respect to the buildings on Eglinton, this case has been going on for some time now. For what, two years, three years?

Alderman Johnston: Three years.

Mayor Eggleton: The owner wanted to demolish them a long time ago. We have done everything possible to try to prevent that from happening. We do not want those buildings lost and those people having to move out. We do not want to start a run on the bank by other such projects.

We have tried everything possible, and that is why we have come here. We have come down to the last resort, and that is to ask for legislation to be able to get the kind of regulation we are unable to get. Perhaps my colleagues and staff, the city solicitor and the representative of the planning commissioner, could give further details.

Mr. Fram: I just thought I would mention really what the mayor has been referring to--and very properly not mentioning too many names--is a case whose name is public, Axelrod of Toronto. It was a decision of the Divisional Court. Speaking from memory, that was the 735-80 series of bylaws that we passed. This was the one in Forest Hill. It imposed height and density restrictions on new buildings to replace apartment buildings built before 1960, that is to say, the old stock.

By the way, the leave to appeal was refused by the Ontario Court of Appeal. The party did not get his mandamus because he was not in any shape to get his mandamus. He did not have all of his specifications, or had not really done anything at all.

Incidentally, the court struck down bylaw 735-80. My comments on whether they ought not to have are irrelevant. The judge did say that the bylaw itself was not concerned with the use of property or construction standards; rather, it was limiting the future use where certain structures presently exist.

There is nothing in section 35; I think it is section 39 that now authorizes the preservation of existing buildings. He said that it might be, as I recall the judgement, a very meritorious and valid planning objective, but unfortunately the Planning Act did not cover it.

At that stage we moved into the legislation. That bylaw was to remain in place in any event for only a couple of years until (inaudible) approval to the Ontario Municipal Board for a couple of years for that bylaw, and the one applying to the city, 734-80, and the one for Swansea, 736-80. It is those numbers anyway. It was at that time that the planning came forward in conjunction with the city solicitor to develop the legislation that you have before you, which in its final form. The city solicitor developed the legislation which is before you today in its final form. He made refinements and so forth. I think that is the best I can do for your question.

Mr. MacQuarrie: You then feel there is no other existing mechanism available under the existing planning acts and zoning bylaws that would give the city protection in these types of circumstances.

Mr. Fram: I think I can answer that question, yes. There may be apartment building bylaws passed for one purpose that might indirectly and incidentally have the effect of controlling demolitions. But to really get at this problem and handle it, we need this legislation.

Mr. MacQuarrie: I asked because I have seen zoning bylaws do substantially what you are wanting here. Also, looking at your bill proper, I was a bit troubled by its indefinite duration by tying it into the life expectancy of rent controls in the province.

What troubled me more was the very limited range of exceptions you put in there, unsafe or built to a residential density that was 50 per cent or less of the maximum residential density provided by the official plan. You give a right of appeal later on in the bill, but--I am sort of thinking out loud here--there must be other exceptions where a person owning a building should be properly entitled to a demolition permit.

Mr. Fram: That is really a question of policy. My instructions on the exceptions were from council and the planners. It is permissive in any event. It is a permissive power, but I think you have to understand the legislation. It is permissive that council can deal with these matters when they come up on their application under section 45.

We have a demolition control body over the entire city, so they have got to come to the council for a demolition permit. At that point, they get the exemption as of right. They can say, "I want my building permit," where it is unsafe and where they can show it is an underutilized site. It is simply right for development.

Mr. MacQuarrie: Let us take another example. We have an apartment building of six units, or whatever, sitting clearly out there as a nonconforming use, contrary to the existing zoning but as an existing nonconforming use. This owner would, by the strict application of this section, have no right to tear that down.

Mayor Eggleton: This, of course, is permissive. The city can listen to each case and judge it on its merits.

Mr. MacQuarrie: That is another aspect of the bill I do not like, to grant to a municipal council certain permissive controls in situations like this. Then you throw yourselves open to the potential charge of discrimination.

Mr. Fram: You have to realize that some of the legislation in section 45 is already in place. I happen to have some knowledge of it because I was appearing on the city's demolition control legislation which was not granted, but which the province enacted as section 45. I have some familiarity with it historically, not just because of age, but because I have been around long enough.

If a man has no building permit--say, he wants to tear down his apartment building and he wants a parking lot with no idea to replace it with anything else--the Ontario Municipal Board in the leading case on the subject, Weiler and Toronto, said if the city of Toronto refused a demolition permit in that case, that is within their discretion. There have been other cases as well, but that is the leading case. So here is a situation where he has already been denied a building permit and yet a parking lot might be the highest and best use of that land. A structure may add nothing to the value of that land, but he has not got a prayer.

11:20 a.m.

Now if he can comply with the zoning and comes within these two exceptions, the unsafe within the meaning of the Building Code Act and build to the density, he still does not get away scot-free. He is still stuck with subsection 45(6) which means he has to build in a minimum of two years. He has got to get on with it or else there is a very substantial penalty. So he is not even scot-free there. Section 45 is itself fairly tough. This is the loophole we are trying to plug in section 45.

I think everyone who has spoken has admitted the developer, if he complies with all the regulations and so on, may be asked to postpone his present-day profit in some cases. I think it is implicit in the legislation. That is all I can usefully add from the legal point of view.

Mayor Eggleton: May I further add that my understanding is that a number of the buildings that may be lost are legal nonconforming. Therefore it would defeat the purpose of the legislation to make some sort of an exemption along those lines.

Mr. MacQuarrie: Why were they zoned for a different use in the first place? Why not change the zoning?

Mayor Eggleton: I think the zoning in most places might be residential. It might not be the exact residential zoning that would accommodate the kind of building that is there.

Mr. Tomlinson: These are older buildings in areas that were later zoned for single family homes. There are height limits and density which makes the existing building, which dates from an earlier period, nonconforming. As far as the tenants in these buildings are concerned, the problem that results if they are demolished is just as severe whether the building is a nonconforming one technically on the zoning or whether it conforms fully to the zoning. There are many buildings in that situation.

Alderman Johnston: That is generally true, but the problem started in the Bathurst-Eglinton area, the old village of Forest Hill where there is a very high density residential development. This is the area where the very acute problem is.

Mr. MacQuarrie: I still wonder whether a change in zoning applying to these particular properties would possibly solve the problem.

Alderman Johnston: My suspicion would be that the same story would happen again. Mr. Axelrod, for instance, sought exemptions from all of the bylaws we passed and was successful. When you have that sort of a determination, it is very hard to overcome through the zoning bylaw.

Mr. Chairman: Perhaps Ms. Fish would take a supplementary at this point.

Ms. Fish: Just preceding the point on legal nonconforming, Your Worship, you did mention that in at least one case, and you could perhaps recall others the planning staff in particular were aware of, the proposal was to demolish a fair-sized rental building for the purpose of replacing it with, I think you made reference to, some town housing or some stacked town housing.

I can well understand where there might be, by way of illustration, a higher density permissible on the site that none the less would enable somebody to build up to that density. You might have a situation where the developer, based on a market analysis, is suggesting that perhaps a lower density than what is permitted is what he or she feels is appropriate. It seems to me that Mr. MacQuarrie is raising a slightly different question, which is where the official plan and the zoning have indicated that the council no longer wishes to see additional production of multiple-occupancy dwellings, hopefully rental.

I would ask if the council would be prepared in this time of severe rental vacancy shortages to re-examine its zoning bylaw designations to give consideration as to whether some change ought to be brought forward to encourage the further production of multiple-occupancy residency, hopefully including rental accommodation, rather than confining areas that have been hit upon with the legal nonconforming aspect as being, for example, a single family residences.

A single family residence is obviously going to mean your townhouse situation, the very same one that you were critical of in some of your opening remarks when developers had come forward to propose the replacement of rental accommodation with single family residency.

Mayor Eggleton: I think a short answer, in terms of moving towards densities that are allowed in the official plan, would be yes. That does not guarantee that we are going to be able to maintain the rental stop for low- to moderate-income people. Just additional units or replacement of one rental unit with one luxury condominium unit does not solve the problem at all. It removes rental stock, for one thing, and it removes a unit for low- to moderate-income people who we are most concerned about.

In the legislation we have provided that where there is 50 per cent or less of the maximum residential density which would be permitted by bylaw under the official plan--in other words, what would be permitted under the official plan in terms of densities in those kinds of buildings where there is a big variance between the official plan and the building--they could automatically, through

exemption, get a demolition permit. However, our information is that the vast majority, 95 per cent, of the rental buildings in the city of Toronto are not in that category.

Certainly we have no problem in trying to encourage development up to official plan densities. But if it just going to be luxury condominium replacing rental, and if it is going to be luxury rental accommodation replacing low- to moderate-income rental accommodation, then that does not serve the purpose of the bill.

Alderman Johnston: May I get in here?

Ms. Fish: Just before you do, Mrs. Johnston, if I may, let me just clarify. I was not suggesting that as an alternative to the bill. Far from it. I have already indicated my support for the bill. Rather, I was probing the possible supplementary or complementary action a council might consider with a view towards encouraging, through zoning or official plan, the production of additional accommodation and, hopefully, rental accommodation.

I was not suggesting that it would replace this bill, but I was dealing with the question of whether there was a willingness to review the zoning or the official plan, given the very unusual conditions that we are now confronting with the vacancy rates, for example, to consider whether some changes might be appropriate.

Mayor Eggleton: Certainly we have no difficulty and would want to encourage additional rental units, all coming within the maximums allowed under the official plan. Perhaps I could have a better understanding of your concern if you gave a specific example. As a general statement I would certainly want to see us doing everything possible to encourage the construction of additional rental units.

11:30 a.m.

Alderman Johnston: May I get in here? The cases of which I am aware are existing rental units being demolished to make way for luxury condominiums. I will give you the number: 790 Eglinton Avenue, West, 58 units at the moment; 800 and 840, 36 and 39 respectively for a total of 133 to be replaced by 98 condominium units; 2525 Bathurst Street--same area--33 rental units to be replaced by 25 condominium units.

There are others through the city, but let me just stick to my own ward: 118 Eglinton Avenue, 26 rental units now empty, now about to be demolished, because that also went to court, for a commercial office. I am not aware in my ward, and it is in my ward that this started and where the problem became a crisis, of any townhouses. We are talking about the demolition of affordable rental housing to be replaced by luxury condominiums. I just cannot justify it, not in these days.

Ms. Fish: I understand what you are saying. I thought I understood and I think that is the reason Mr. MacQuarrie thought he understood as well, and that is the reason for the question, that in some of these cases to which this bill, if adopted, might apply, are

circumstances where the buildings are legal nonconforming, where there is little option or choice. My question was not for any action that would replace this bill. I stress again, rather, whether there was consideration of a complementary action to assess how widespread that problem was and whether in those neighbourhoods it might be appropriate to give some reconsideration or--

Mayor Eggleton: An exemption to legal nonconforming uses.

Ms. Fish: No. I will say it again. My question is for action that might be complementary that the council could consider, complementary to this bill, to give a consideration to the residential accommodation that is allowable under the official plan and the zoning bylaw such that when you have a very tight vacancy rate, when you are concerned about the production of additional accommodation as well as the preservation of what is there, that you might conceivably give the committee some indication of whether the council would be prepared to review those categories and understandably the council might be prepared to bring forward any form of amendment that would hopefully have the effect of developing additional rental accommodation. It might be in a higher density. It might also be in fairly low density.

Just to make myself clear, I can recall some discussions around concern about converting very large residences, for example, into duplexes, triplexes, fourplexes, things that even under the six units are not permitted in the R-1 areas. I simply put that forward and I was seeking some indication from you or Mrs. Johnston as to whether that might be the kind of thing that--

Mayor Eggleton: That is a fair point. Yes, we are looking at that.

Alderman Johnston: Maybe I could speak again for my ward, which is 42 per cent tenants. We are talking again about an area where the Forest Hill zoning bylaw was more restrictive than the city of Toronto one is now. We are talking about an area where there is no land at all. We are being very inventive. We are building a project through the Metro labour council on top of a library, on the roof. I dreamed about it and it is happening. That is how desperate you get when your mind takes over during the night. The Forest Hill incinerator site, which is a site I have had my eye on for years, was grabbed by the police department. We fought that one unsuccessfully. It is gone.

The Davisville development--I am sure you remember, Ms. Fish--the Davisville yards, which had been through, approved by council and approved by the Ontario Municipal Board, is not being built. A lot of the community support came from the fact that there would be 366 units of senior citizen housing built in it. It was a selling point with the community. That is not happening. I am trying now to think of things like deep-sea water housing, air rights and thinking inventively. There is no land. We cannot get the Canadian armed forces base--I am sure you remember that one--six and a half acres.

With respect to doubling up, I think it is happening. I think the city will have to consider that. It is certainly happening with elderly people, and other people are starting to share together. You know about our group home policy which permits multiple occupancy in even our zoning. We have done a lot; you know we have done a lot. I would like to see us do a lot more, but I certainly do not want to see us take down more rental units than we are ever going to be able to build. It does not make any sense.

Mr. Chairman: Alderman Johnston and also Ms. Fish, this is a good place to break. We are on Mr. MacQuarrie's supplementary.

Ms. Fish: Yes, I thank you for your generosity.

Mr. MacQuarrie: Mr. Chairman, I can certainly appreciate the need to preserve housing stock, but when the mayor mentions that some of the stock they have decided to preserve is legally nonconforming in its present state, I then wonder what has gone wrong with Toronto's planning. They are planning for neighbourhoods and for communities.

They are planning for presumably the best in those neighbourhoods. Yet I see some conflict between wanting, as you said at the outset, to preserve existing neighbourhoods and the existing range of housing stock within those neighbourhoods and yet having that sort of premise run contrary to your existing zoning bylaws. There seems to be conflict in my mind in those two objectives. To my mind, your planning objectives, on the one hand, and your desire to preserve a stock of housing and existing neighbourhoods, on the other hand, should mesh. I am getting a bit lost here.

Mayor Eggleton: I will ask our planner to help you out.

Mr. Tomlinson: There is, in a sense, a conflict between a planning objective that says in the long run, looking decades ahead, certain neighbourhoods should be built to a certain density even though we now have some older apartment houses over that density in the neighbourhood. There is a conflict between that long-run objective and a short-run problem which relates to a crisis situation in rental housing.

When you have these extreme shortages, you even look at the legal nonconforming buildings, which in very long-term planning terms should be replaced by lower density buildings, and you say that the crisis is such that even though we have these long-term planning objectives, these buildings should last as long as this crisis lasts.

Mr. MacQuarrie: Zoning bylaws are not engraved in stone and official plans are given an average of 20 to 25 years of life expectancy and are to be reviewed periodically within their span. Is there any way your existing planning and zoning can be brought into step with this desire to preserve?

Mr. Tomlinson: I would like to make a point I have been wanting to make for a while. Changing the zoning that now applies to

the sites, so as to upzone and make the buildings that are now nonconforming into conforming uses, will not add one moderately priced rental housing unit to the stock. The economics of development at the moment are such that people simply do not build those. That upzoning would not address the present crisis. It would simply result in perhaps very extensive redevelopment of certain neighbourhoods to develop more luxury condominiums.

Mr. MacQuarrie: I do not necessarily subscribe to that. I think you can build in adequate controls. To go back to the bill for just a moment, I have raised my concern about only two exceptions being built in and I can conceive of others. I have mentioned one, the nonconforming use, and we have dealt with it at some length.

11:40 a.m.

Another possible exception could be buildings that are objectionable--not necessarily unsafe within the meaning of the building code--and offensive from the point of view of the neighbourhood itself. Some buildings are offensive not only in terms of occupation, but also in terms of location, appearance and all the rest of it. I am just wondering why we are limited to these two exceptions.

Mayor Eggleton: We simply did not feel there were any other necessary exemptions. I do not know of any cases you are referring to, such as a building being objectionable to people in the community. In the list we have, from our understanding of the ones that are threatened, I do not know of cases where the neighbourhood would say they are objectionable and should come down and be replaced with luxury condominiums.

Mr. MacQuarrie: I am speaking in the abstract here.

Mayor Eggleton: Having the advantage of knowing some of these buildings and some of these proposals, I do not believe that to be the case. People in neighbourhoods are generally concerned with disruption and change to the neighborhood. They accept what is there now far more readily. In the case of the buildings on Eglinton Avenue where there has been a great deal of public discussion, the community has generally supported those buildings being retained as opposed to being demolished and replaced with something else.

Mr. Chairman: I think the chair has to exert itself here. Mr. MacQuarrie, I am afraid we must press on in fairness to everyone else.

Mr. MacQuarrie: I am sorry.

Mr. Chairman: No, do not be sorry.

Mr. Brandt: I wanted to focus on another aspect of the bill if I could. How would this bill respond to a situation where a building now being used for apartments was being extensively renovated or converted to either luxury apartments or condominiums, but the effective change would take place without a total demolition of the building? As an example, there is a building now undergoing this kind of alteration at the corner of Wellesley Street and Church Street.

In asking that question, I would like to ask for a more specific definition of what your interpretation of the word "demolition" is. Does it mean completely removed to the ground? Does it mean to the bare walls? What happens to the inside of the building? Is there a loophole that one can get around that perhaps this bill does not cover? Those are some of the embellishments to the question I am raising.

Mayor Eggleton: I will have the solicitor respond to the definition problem and any possible loopholes. We have legislation and policy provisions at the city which deal with the question of conversions. Our policy is a fairly tight and tough one with respect to not allowing conversions of rental accommodation to condominium, and not to further allow a two-step process of conversion from low moderate rental to luxury rental to be an initial step towards condominium.

We are simply not allowing those cases. We have just recently toughened up our policy to that effect. So we have the control with respect to conversions. We do not have control where they demolish that building and put up a new one. This perhaps is a loophole in trying to get around that policy. This is where we need this legislation.

I will ask the solicitor to answer the question of what constitutes a demolition for this purpose.

Mr. Fram: It is difficult. Section 45 of the Planning Act provides that where we passed the demolition control area bylaw, "thereafter no person shall demolish the whole or any part of any residential property in the area of demolition control"--that is, the whole or any part. We have a bylaw in which council gives its approval in advance to certain minor--I forget the number of it, though I remember putting it through, but those are very small.

Under the Building Code Act, "'demolition' means the doing of anything in the removal of a building or any material part thereof." It is always a judgement call as to what constitutes a demolition. An interior partition is presumably not, but when there is extensive reconstruction of any part of the fabric, that will be a demolition and will be caught.

Mr. Brandt: Effectively what happened in the case I am citing is that there was nothing left but the four walls of the building. The internal part of the building was completely gutted. I happen to have an apartment not too far from there, so I have watched the progress. But what is being carried out there is effectively doing the very sort of thing you are attempting to stop with this particular bill.

There were a number of what I would consider to be low- or moderate-priced apartments contained within the building. As a result of the conversion going on internally, the external changes are relatively modest, but the internal changes are vast and extensive and effectively do the very sort of thing you are addressing yourselves to with this bill.

Mr. Fram: I have considered those to be demolitions and they have to apply to the council. If they do not apply, there is the Building Code Act and you will have to have a double permit. You have to have a permit from the chief building official and you have to have one from the council.

Given the definition of "demolition" in the Building Code Act, if they proceeded without going to the council in such a case, you would have to get a stop-work order and a prosecution either under the Building Code Act or under section 45 of the Planning Act. I think it would be under the Building Code Act.

The substantial gutting, leaving just the frame, has been, to my mind, a demolition.

Mayor Eggleton: This bill would then catch that.

Mr. Fram: I think it would. That is my legal opinion, anyway, subject to some court saying, "No, it does not."

Mr. Brandt: I had a question in regard to how this particular bill came to this point. When the collective intelligence of the Toronto council discussed this bill--I assume you had many discussions about it and that they were rather extensive--could you give me some indication of what the final outcome was in terms of council's decision? What was the balance?

I assume the majority voted in favour of it, but what was the actual number?

Mayor Eggleton: It was a 16 to five vote, so it was very decisive vote.

Mr. Brandt: That is what I was trying to get at. I wanted to know how decisive council was in its deliberations.

I brought up the first question, just as a matter of interest, because there was a building in my own community that had a legal nonconforming use as a result of not meeting the required setback that council had established for road-widening purposes. In this particular instance the developer simply demolished the entire inside of the building, allowing the building to remain, and was able to get around the bylaw. We had never had this kind of situation before.

He built an entirely new building within the skeleton of the old building, which still did not meet the bylaw requirements for setback purposes. Once having built the new building, he simply removed the exterior wall and was able to get around a number of council bylaws as a direct result of that. It was a tricky little situation, but he did it.

I was trying to discover some kind of nuance that a developer could come up with, knowing the ingenuity of some minds, in attempting to get around the demolition. That is why I wanted to get an interpretation.

Mayor Eggleton: That is appreciated because we want to make sure we cover those kinds of situations. As Mr. Fram has indicated, subject to it being challenged in the court, it would appear to do that.

Mr. Brandt: Is there room for either an amendment or some consideration being given to a situation where you have a small number of tenants in a property that, from the developer's standpoint, is not economically viable?

Let us say it is a six, eight or 10-unit building where, as a result of discussions--I realize the situations Alderman Johnston and others brought up where there are people who are in their home neighbourhoods and perhaps do not wish to move--the developer would say that he has found alternative accommodation for the eight, 10 or 12 people which they agree to and where there can be a reasonable deal made between all parties.

11:50 a.m.

Would there be room for your bylaw to incorporate something that would allow the developer to proceed with demolition? In other words, would the societal, humane factors have been looked after?

Mayor Eggleton: Inasmuch as the legislation is permissive and we may refuse to issue, it also means that we may choose to issue it. Those kinds of circumstances could be taken into consideration.

The only difficulty I have with that is it does not meet one of the basic purposes of the bill. That would be to retain the rental stock we have. It would still diminish the number of rental units. It may look after those specific people, perhaps to their satisfaction, but it would not resolve the other matter of trying to maintain the rental stock of the city.

That kind of situation, as I say, could be taken into consideration, inasmuch as the legislation and some bylaws are permissive.

Alderman Johnston: There is a building in my ward that is now vacant. The landlord took the tenants to court. The court ruled they had to settle. They did settle. There was a cash settlement made to those tenants of \$1,200 and they had to get out on May 5.

That is a very good apartment building sitting empty, and that, to me, is a crime.

Mr. Mitchell: Is it at Yonge and Eglinton?

Alderman Johnston: Yes, at 118 Eglinton Avenue West.

Mr. Mitchell: Is it the one that is boarded up?

Alderman Johnston: Yes.

Mr. Chairman: Mr. Brandt, are you finished?

Mr. Brandt: Yes.

Mr. Ruprecht: I want to come back to one important aspect, and that is the business of being temporary. This bill is just a temporary measure. Even though, as you probably have gathered by now, some of us are very sympathetic to this bill, I would suspect that if you could tie this to a very realistic measure of temporariness, it would ease the passage of this bill.

Did you consider tying this bill to, for instance, a percentage of the vacancy rate or any other measure? Did you discuss that?

Mayor Eggleton: As a council, no. We took it along the lines that are suggested here. But I would suggest to you that is quite possible. As I indicated, the need for this arises from the housing crisis we are in, the no-vacancy rental situation we are in. As long as we continue to meet that purpose of the bill, there are perhaps different ways of determining its termination.

This one says to tie it in with rent review legislation. We could consider one that would tie it into a vacancy rate. I would not see any difficulty with that. The council has not considered that matter. The council has tied it in with the rent review legislation. A vacancy rate of 2.5 per cent is one we frequently use with respect to our policies--for example, our policy on conversion to condominiums--as being a sufficient vacancy rate to indicate that the crisis is over and that we could return to more normal conditions. If there was a suggestion to tie this bill into that vacancy rate, I would suggest that is quite possible. I would personally see no difficulty in that.

Mr. Grande: I have a couple of questions, Your Worship, rising from your statement.

It seems to me there has been a tremendous increase in the number of demolitions proposed in the last couple of years.

Mayor Eggleton: Yes.

Mr. Grande: You were talking about under 900 units. Do you have any indication how many people that involves?

Mayor Eggleton: No, but we must have some average.

Mr. Tomlinton: It would be approximately 2,000, Mr. Grande.

Mr. Grande: As you probably know, there is extreme pressure from developers to go into luxury condominiums in the area I represent, the borough of York, on Heath and Tichester. That displaces a fair number of people as well. On Tichester 25 luxury condominiums will replace 70 units and on Heath another 10 condominiums will replace 40 or 50 units.

Mayor Eggleton: That is the very problem we are talking about.

Mr. Grande: Where do these people go? Where do the people go who are displaced, given the fact the vacancy rate is so low? When the people on Heath were served an eviction notice in the middle of February, they looked around to find accommodation and there was absolutely no way they could find anything. Where do they end up? Do you have any idea?

Mayor Eggleton: That is the question we also ask. We are concerned that there are very few options. When you do not have a vacancy rate, you are down to 0.6 or below that, there is obviously very little choice for them. Given prices in the city of Toronto itself, I suspect a good many of these people will be driven out into outlying areas either in the suburbs or beyond the borders of Metropolitan Toronto. They have to set in new roots. They are disrupted from the community they are in. They do not have quite the transportation service and various other services they have become accustomed to in the city of Toronto.

I am quite concerned that, given the way things are going, the city of Toronto is well on its way to becoming a city for the rich. People of modest means, people of low or moderate income, are being driven out of the city. I think an awful lot of these people will end up going far beyond the city's borders. But even beyond the city's borders within Metropolitan Toronto, the choices are rather limited.

Mr. Grande: In other words, you do, in essence, agree with Mayor Lastman when he says it will create ghettos. Basically you are saying that in Toronto the ghettos will be ghettos for the rich and the outlying areas will be the ghettos for the poor. Are you in agreement with that?

Mayor Eggleton: I do not know. I am saying there is very little choice in the city of Toronto and very little choice in Metropolitan Toronto. We cannot afford to reduce the existing low moderate rental housing stock in Toronto..

Mr. Chairman: Thank you very much. That is reasonably close to schedule. There are no other members who wish to ask questions. I wish to thank you, Your Worship and the solicitor and the planner with you, for appearing before us this morning. This will be carrying on, if you wish to have representatives at least in attendance, during the next two days of this week and then on the June 16. Yes, Mr. Fram.

Mr. Fram: I will be there.

Mayor Eggleton: We will have representatives and I hope I will be able to return myself to observe some of the proceedings as well.

Mr. Chairman: Thank you. It would probably be helpful to the committee if Mr. Fram would be in the audience from a technical point of view.

Mayor Eggleton: Yes, he will be.

Mr. Chairman: Good. Thank you.

Mayor Eggleton: Thank you very much, Mr. Chairman.

Mr. Chairman: Mr. Sheppard, I believe there is no exhibit. You do not have a prepared exhibit.

Alderman Sheppard: No.

Mr. Chairman: I do apologize for limiting you and Alderman White to 15 minutes as a suggested length of time. It was felt since you are aldermen, even though you are appearing independently, there was some reason to shorten up your appearance. I hope you do not feel discriminated against.

Alderman Sheppard: Not at all. It has been useful for me to hear the last two hours. I will probably throw away everything I was going to say. It was prepared in trying to address in general some of the questions I have heard being raised around the floor.

12 noon

Mr. Chairman: Yes. Would you proceed?

Alderman Sheppard: All right. Mr. Chairman, the obvious first problem is the human one, and that has been identified several times this morning. Where do people go? Maybe I can give you a couple of new facts to add to that.

The city has a nonprofit housing program. It is one of the ways we try to deal with people of low and moderate income who face this situation. We are able to produce 1,000 or so units a year at the moment. We do not know what is going to happen in the future. In the last couple of months we have put two of those buildings on the market in the St. Lawrence area. Scatting is a building of 284 units and the Esplanade is a building of 303 units. Those entire buildings--600 units of housing top to bottom--were rented in less than a week.

The annual report of the housing department indicates we have over 4,000 people on our waiting list for assisted housing. Our experience is that about 16,000 people, one quarter of the market, are looking to find a place to live in the city of Toronto. They are looking, because they are living in overcrowded conditions now, or they cannot find a place at all, or for any one of a number of reasons.

I would emphasize the 0.6 figure, the six units in every 1,000 figure you were talking about this morning, does indeed include the luxury condominium market. If you take that section out, I would only guess from the constituent calls, the general calls from the public I get, as I am sure you do, we are probably down to a figure of about zero. The housing is just not there.

When my constituents get evicted from one-bedroom units that they have been paying in the neighbourhood of \$350 to \$400 for--those are a unit that a young couple and maybe a baby would be living in--they are finding that in my part of town, the Beaches, Ward 9 north to the Danforth, they cannot replace that accommodation at less than \$550 and it is often more like \$650 or \$700 a month.

You ask why the number that has been placed in the bill is six or more. I was one of the people most interested in the number six because in my part of Toronto we have a number of double triplex and double fourplex buildings. They are also in Ward 8 and there are some in Ward 7.

That is housing where young families can get started because there is a back yard or a front yard in some cases and there are usually parks around. That is an area where people can get started in the Toronto housing market. That is exactly the kind of housing that has become gentrified and very trendy to live in and is most threatened by demolition and replacement with luxury townhouses or other forms of housing.

When you talk about the senior citizens at Eglinton and Bathurst--we have got some of those as well--I would also like you to add in the young family, a group which is very important to preserving our neighbourhoods. When we are talking about preserving the neighbourhoods, we are talking about a mature city. The city of Toronto has built an infrastructure of schools, libraries, parks, community centres, all those kinds of things.

Once you start changing the mix of the people who are in that community--a building where there was a husband and wife and a couple of kids is now a building where there are four singles living together--then what happens to the school population, what happens to the library usage, how do the parks programs get affected, and in general how does that affect the whole fabric of that infrastructure that your dollars at the provincial level and that our dollars at the municipal level have gone into creating?

When you add to that the general reduction in the number of people who are housed in each of these units when these kinds of things occur, you will find you have a generally falling population in the city as well. So you have an infrastructure you have built for one level and you have a totally different group of people who are there to use it and there are not as many of them.

That is an obvious problem. The neighbourhood sees it as a problem because their friends cannot live there any more and next year it may be they who cannot live there any more. Of course, it is a planning problem for the city of Toronto.

The comments about land use and the city's policies should be very clearly understood. We are not asking you to pass this bill today as a cure-all for finding residential land in Toronto. We are very interested in finding more residential land and we are actively pursuing it. We are pursuing it with this government in terms of the lands east of Bay Street owned by the province, and the province has said on numerous occasions that it would make provincially owned lands available for residential development.

We are pursuing it in old, industrial and derelict areas in the east of the Bay-Front. We are pursuing it in Harbourfront, a mixed-use, recreational, housing development. We are obviously going to pursue it on the railroad lands, which I guess would be viewed as

industrial lands. We will pursue it wherever we can pursue it. But if we are in the position that every time we build a housing unit, four or five others are being torn down, we are not going to make very much progress.

As the mayor said to you, in all of the city of Toronto last year 15 rental housing units were built. There is lots of housing being built in Toronto. You see it being built all over the place, but something like 94 or 95 per cent of that housing is private luxury condominium housing. It is not affordable rental housing. Really, it is only the city and the co-ops that are building any affordable rental housing, and we are swimming upstream against a tide of demolitions coming at us.

I guess that is really the message, and you will probably hear it consistently from the tenants on a personal level and the politicians in terms of dealing with their own communities. It is just a tool for us to try to at least make some headway up that river of providing more affordable accommodation in the city.

The argument that you will hear, that I see in your exhibits, that it is a way that somehow prevents private owners from making profit, is an issue I think you can address in your questions to them around the subject of rent review and rent controls. The rent control system is not a system which was designed to prevent people making money on buildings, and if they need the benefit of that rent control system, they should use it. They should also remember that within the city of Toronto, 90 per cent of the units last year never went to rent controls, so I presume that the landlords were either making sufficient money or their units were sufficiently expensive to be exempted from it.

I think that would be useful to remember when you hear those arguments made tomorrow. Thank you very much.

Mr. Chairman: Thank you, Alderman Sheppard. Is there anyone who wishes to address Alderman Sheppard with any questions? I might point out from the chair that there might be other reasons why there was not a larger percentage that went to rent review. There could be others. Your comment would not be mutually exclusive.

Alderman Sheppard: Yes, sir, I would not deny that.

Mr. Philip: Notwithstanding that, Mr. Chairman, there are research studies that show that the average landlord in Toronto, based on the amount of return on investment, averaged over 20 per cent last year and the year before. So landlords are not losing money in Toronto.

I have a question for the alderman. In terms of your own people, can you give us a specific case of someone you know of who was displaced, a typical case that you would like to relate to us to give us some idea of the human side? We are not just dealing in numbers. Numbers are an abstract thing.

Alderman Sheppard: The first thing I can say is that in 1981 and so far in 1982 this has become the most frequent phone call I have had. It used to be permit parking. It used to be dogs running at large. It used to be snow removal. It is now housing. That is the

question. It would not be an exaggeration to say that in the last two or three months, since the dead of winter, now that renovations and things like that really get going, I am getting a new housing inquiry a day, every day. That, to me, indicates a very serious escalation in the problem.

12:10 p.m.

I can relate stories of people who are often single parents, who are often living in buildings that were built along strip commercial streets, like Queen Street East, Kingston Road or Gerrard Street, who have been able to live in that area for some period of time, paying some \$350 to \$400 a month for a one-bedroom apartment with a gradual escalation of six per cent a year. The building gets sold and the previous landlord obviously walks away with quite a substantial capital gain.

One of two things happens. The new owner does not want to be restricted by the provisions of rent controls or he wants to demolish the whole building and go into a much more luxurious form of housing, presumably because there is going to be a substantially better profit in doing that. The tenants all get the normal 120-day notice saying that they have to be out. Of course, they are all in a great panic, their children are in school, they have lived in that neighbourhood, they may work in that neighbourhood and all their friends are in that neighbourhood.

Then it is your job to try to scan the resources that you have got, Cityhome, Ontario Housing Corporation, any co-ops you may know, any ads you read in the local ward newspapers, any 25-cent hardware store signs you see tacked up on your streets--and I write every one of those down whenever I see them--to give them some references and some assistance.

I have never had the experience in the last few months of being able to accommodate them at anything like the rent at which they were previously accommodated and from which they are going to be evicted. As I say, the figure then becomes \$550, \$600, \$650. What has happened in some cases is that people have had to double up and live together. Two single mums and two children move into a two-bedroom apartment together and live together as four people in that unit because that is the only way they can afford to continue to live in the community. They split the \$650 or \$700, if it is a two-bedroom, between them and they continue to live there.

Otherwise, my experience is that they go to Malvern, or places that far away within Metro, or they go to Oshawa or Pickering, to find rental accommodation that they can afford to pay. That is not healthy for my neighbourhood and it is certainly not healthy for them.

Mr. Philip: Is it fair to say that you have people who are forced to live in a clandestine way when they move in with another person and their name is not on the list?

Doubling up creates problems not only for the tenant who that person is moving in with, but for the building. It creates extra tensions in that community, not to mention the fact that these

"visitors" are living in a kind of twilight zone where they are always afraid of the landlord knocking at the door and saying, "You are here illegally."

Alderman Sheppard: It is not just the landlord; it is the building inspector too.

I know a case in my own ward on which I get a phone call about three times a week. The woman is absolutely desperate. She was nice to a friend; she invited the friend and her two children to come and live with her while she found a place to live. That was in November. The woman has been living in her place since then and has not been able to find a place to live. Of course, that is illegal. If the city inspector happens to come down that street and knocks on her door, the owner of the building who invited them in will be in breach of our building code and it will be considered an unsafe condition.

Mr. Philip: Is it not also your experience, Alderman Sheppard, that because of the rules of Ontario Housing, many of these people are being forced to move in with people in Ontario Housing? Since the rules say they cannot apply for tenancy while already living in Ontario Housing, they are placed in double jeopardy. The tenant can be evicted by Ontario Housing and the people who move in with that original tenant cannot apply for geared-to-income housing from within a geared-to-income unit?

Alderman Sheppard: That is right. I have not personally had that. I only have one tiny OHC building in my ward with 50 units, but I am certainly aware that that has been happening.

Mr. Philip: A number of cases I know of have false addresses and all kinds of things while living there because it is the only way they can apply for Ontario Housing.

Would you say that people living in buildings in your ward where the landlord has not yet, or may never, contemplate demolition are now under certain psychological strain, always feeling that if the building next door went, or if friends were forced out of apartments, that they would probably be next?

Alderman Sheppard: Yes, and I can tell you lots of anecdotes about that.

I have people who are living along Queen Street, in particular a street where buildings are being renovated and one at least is being virtually demolished. Their neighbours will phone me once a month or once every couple of months to ask, "Is there any building permit application for my building or is there any demolition application for my building?"

Yes, people are really frightened. They want to know as fast as they can because they know how bad the search is going to be and that they may have to turn their whole lives around, find new jobs and certainly locate their kids in new schools. They need a lot of time to do that. They want to know as quickly as they can if there is going to be something happening. Yes, I think that fear exists.

Mr. Philip: When we had a different matter before this committee a couple of years ago, namely, the problem of school closings, it was pointed out by a member of groups that when an area is in jeopardy, when there is the thought or a suspicion that a school is going to close, you get the phenomenon of people transferring their children out of that school, even though it may not be a reality. That helps to break down the community in which they are living and accelerates the problem.

Are you finding that some of your constituents, even though their building is not immediately under threat, tell you that they are trying to look for accommodation elsewhere, high-rise, suburbs and so forth, because they do not want the problem and disruption of removing themselves in the middle of the year?

Alderman Sheppard: Yes, not specific to school but in general, and sometimes around jobs. If I know I am not going to be able to live here longer than six months, I am not going to take this job. I will go and take an equivalent job in Peterborough or something else like that.

Ms. Fish: Alderman Sheppard, you indicated a problem with some of the doubling up, people living in basements, and you made reference to that as being illegal. I would ask if you were talking about "illegal" simply by zoning bylaw and discretion, or "illegal" because of requirements that may flow, for example, under the building code, where a basement with inadequate ceiling height or inadequate windows would deem the area unfit for human habitation.

Alderman Sheppard: Absolutely, the latter--lack of a seven-foot ceiling, lack of 10 per cent window space, lack of an exit from the space. It is very serious. The people who get into the mess know it is serious but cannot see any way out of it. I cannot help them out of it either often.

Mr. Chairman: Thank you very much, Alderman Sheppard, for your presentation. Alderman White.

Gentlemen and Ms. Fish, might I refer you to exhibit 6? Alderman White has a two-page letter to us dated today. The clerk is distributing it now.

Alderman White: I will just summarize the letter. Many of the points contained therein are essentially the points that have been made by the two previous witnesses and I will just emphasize some of the points.

The situation the city of Toronto finds itself in now is that it does have some considerable control over certain pressures on the rental housing stock. Under the condominium conversion process the city is able to prevent the conversion of existing rental to condominiums. As recently as the last council meeting two weeks ago, the city's condominium conversion policy was strengthened so that in the future, assuming the council now sticks to its policy, there will be no conversions until the Metro-wide vacancy rate reaches 2.5 per cent. So that is one significant piece of legislation we are able to use to exercise some control over loss of rental.

12:20 p.m.

Related to that is the point that I think Mr. Brandt raised, which is the conversion of moderately priced rental to luxury rental. In a report that was before council a few months ago, the commissioner of planning argued that this kind of process very often takes place as the first step in a two-step process which would then see these newly renovated apartments converted to condominiums.

To the extent the city council is very firm on its condominium conversion policy and applies it strictly to luxury rental buildings as well, much of the incentive to convert from moderately priced rental to luxury rental and then on to condominiums is lost.

Also, in a report that council adopted on April 23 the commissioner of planning argued that in any case there is a certain softness to the market for luxury rental. That particular source of pressure is at least in part controllable by the city.

The big gap, of course, is the problem that Prl3 attempts to address. It would give this city some means of controlling the conversion, or at least the demolition of existing rental, for the building of condominiums on the resulting vacant land. I think that is the very large gap that city council faces, and that this bill will help to close. Of course, I would urge that you would recommend the bill to the Legislature.

In terms of what has been accomplished under the city's nonprofit program, although there was significant support on council for the nonprofit program, only 283 units were built last year. It is not hard to make the calculation from that, that the loss of a very few rental buildings basically negates the city's efforts in the nonprofit program, a program which requires considerable public resources from senior levels of government as well as from the city.

Basically what we are doing is putting lots of money into the nonprofit program, not making any more units available as long as we have the other problem with the demolition of moderately priced buildings. This year the city has targeted 846 units, but again it would not require too many demolitions to negate that target.

From my own ward, which is in the west end of the city--High Park, Swansea, the Junction area--about one third of my constituents are tenants. Quite a large number of them live in fairly new large buildings, immediately north of High Park, built by Cadillac Fairview about 12 years ago. However, I calculate that there are still about 1,000 units of the moderately priced older sorts of accommodation that are under threat.

There has been in the last two years at least one building that has been demolished and rebuilt as luxury condominium accommodation. Incidentally, that building is still not entirely sold out. It is still not fully occupied. I would say that represents wasted resources.

Basically, the old building, which was serving about 30 households quite adequately, has been replaced with a building accommodating about the same number but which is not even yet fully occupied.

Of course, the people who live in that immediate neighbourhood and other similar low-priced apartments are very concerned. When I sent a letter--and this addresses to some extent the psychological concerns that Mr. Philip raised--to my constituents advising that these hearings were taking place, I received quite a number of phone calls, people almost in a panic wondering whether their building was going to be torn down very shortly.

Your suggestion that the problem seems to create that panic, where people respond and are very anxious about whether they are going to have a place to live in the very near future.

As was pointed out, the legislation before you is very moderate. Knowing Ms. Fish, I do not think she would propose anything that was not very moderate. It does contain provisions for an appeal and allows the council to exercise some discretion. I would say that is an important aspect of it.

If there are certain circumstances that come along where, in council's opinion, a demolition permit should be granted, I think council should have the discretion to grant it. In these situations there are always circumstances that cannot be foreseen when legislation is drafted, where it would make more sense to issue a demolition permit. I think the discretionary powers provided to city council are very useful.

The only other comment I wish to make is that I understand that anyone wishing to address the committee will not necessarily be guaranteed a time to appear. I would really urge the committee to make every possible effort to make sure anyone who wishes to address the committee would have that opportunity.

I chair the neighbourhoods committee that deals with housing matters at city council. I understand the problem the committees face in trying to accommodate everyone, but this is an issue which is of significant importance to people throughout Toronto and I really would urge you to make provisions to hear everybody who wishes to be heard.

Mr. Chairman: In regard to the scheduling of witnesses, it is difficult because we do have a lineup of estimates of different ministries put in front of us. They are very late because of our provincial budget, so time is really of the essence. We are really telescoped, if I may call it that, in trying to get all the business we now have in front of us dealt with. So we have scheduled the 16th; we have that much room, as well as these three days. After that I do not know where we are going.

With the estimates, it depends when the House gets out. If the House gets out in June, then it is one thing; if it gets out in July I suppose that is a different matter. We are really indefinite at this point. We are trying to get as many people in as we can and we will see what pressures there are when we get down near the end as

to how many other people want to come in front of us.

Mr. Philip: Alderman White, in response to your last comment I am somewhat torn by the need to hear all the people who want to democratically voice their view on this bill, but also torn by the fact that unless we get this bill passed in this committee and get it back into the House--if it is passed in the committee and then passed at such a late date that the government House leader says we cannot deal with it--then we are really telling everybody in your area who wants to demolish buildings that they better do it this summer. I can see a run on them.

That is a concern to me. That is just a comment, something the committee will have to struggle with.

In your opening remarks, you said the provincial government in its wisdom has given the city some control over one type of conversion, namely direct conversion from rental to condo, but that you do not yet have the control of conversion by demolition. Would you not agree that it would be extremely inconsistent and completely illogical for the government to accept the basic principle of giving you one kind of control over this particular phenomenon, but not the other?

Alderman White: Yes, it is inconsistent. More importantly, it is impractical because the pressure now is coming, as has been demonstrated, from those developers who find it profitable to actually demolish the buildings before going ahead and building new condominiums. The legislation under which we operate is the Condominium Act.

12:30 p.m.

The minister seeks the comments of the local municipality, or at least it is eventually referred to the local municipality to recommend whether a draft plan of a condominium should proceed. Through that procedure, the city has exercised considerable control over that process. I gather that has been tested at the Ontario Municipal Board and has stood up.

But you are right, the pressure is now coming from the more drastic proposal of demolishing the old building and then rebuilding, usually with luxury condominiums.

Mr. Philip: You mentioned one in your ward which was converted. What were the new condominium units selling for?

Alderman White: They are in the order of \$120,000.

Mr. Philip: You are talking about at least a \$60,000 family income to be able to carry something like that.

Alderman White: Yes, just off the top of my head, that sounds like the appropriate ratio.

Mr. Philip: What would the income levels have been of the people who lived in the building that was converted?

Alderman White: As has been mentioned, many of the people in the building that was demolished were elderly. I would think their household incomes would be below the median in Metro, incomes in the range of \$15,000 to \$20,000.

Mr. Philip: What you are saying is that in the instance you are most familiar with, if the accommodation of people in the \$10,000 to \$20,000-a-year family income bracket was replaced with accommodation for \$120,000, they would require at least \$60,000 to \$70,000 a year in family income to carry that.

Alderman White: Yes, that is the kind of situation we are facing. Much of the new ownership housing in the city is condominiums, but the price of a new house is over \$100,000.

Mr. Philip: It has dropped. It is around \$94,000 right now.

Alderman White: But that is the kind of range we are looking at. The interest rates themselves are contributing to the impossibility of trying to own that kind of housing.

Mr. Philip: But even at \$94,000, you would require a \$60,000 family income to carry it.

Ms. Bryden: I have one question, Alderman White. You mentioned the vacancy rate has been well below one per cent for several years. While I understand there has been a slight improvement in the amount recently, I think it is mainly in luxury apartments. Do you have any breakdown of the vacancy rate between what might be called moderately-priced rental accommodation and higher-priced rental accommodation?

Alderman White: As I understand it, it is now at 0.6 per cent. The vacancy rate appears to have increased recently because vacant condominium units which are now being made available for rental were recently included in those statistics. I believe the mayor mentioned earlier the types of rents in those units are in the order of \$1,000 or \$1,200 and up.

Mr. Tomlinson has come to my assistance with the exact vacancy rate. I had understood the figure was only 0.3 per cent earlier, but more recently it was 0.6 per cent.

Mr. Tomlinson: Ms. Bryden, we checked the rise in the vacancy rate from 0.3 per cent to 0.6 per cent with the officials at Canada Mortgage and Housing Corp. who do the statistics. They said the increase was entirely due to the including of two buildings in the city of Toronto; Queen's Park Place, which is near here--

Ms. Bryden: Not exactly a cheap place.

Mr. Tomlinson: --and 84 Gerrard Street East, which is called Place Gerrard, both of which are luxury rental buildings. Were those buildings not counted, both of them are condominiums available entirely for rent, the vacancy rate would have remained at the 0.3 per cent that it was in October.

Mr. Philip: Was one of those not designated as a

condominium, but they simply decided to rent until the market warmed up a bit?

Mr. Tomlinson: They are both in that category. CMHC's policy is to include in the rental vacancy a condominium building that is entirely for rent. If there is even one owner-occupant in the building, they exclude it from the survey.

Ms. Bryden: What you are saying, Alderman White, is that even though the city has almost tripled its targeted units, it is hardly keeping up with the current demand for moderately priced rental accommodation. If demolitions are permitted, it would be even more difficult to keep up with demand or to prevent the waiting lists from growing.

Alderman White: It should be understood that the targets Cityhome adopts reflect what the commissioner believes can actually be accomplished.

However, a few years ago, the city set itself a target of 20,000 units; I forgot the exact numbers, but in any case was well behind the long-term target it set itself. We had hoped to accomplish within 10 years the provision of a certain number of assisted units. We are well behind what we had hoped for.

These targets do not, in any way, reflect what we had hoped for in our dreams a few years ago. They simply reflect what, given the price of land and the shortage of funds for development of nonprofit housing, the commissioner believes can actually be accomplished.

The main constraint is finding land in the city on which nonprofit housing can be built and still meet the guidelines of the Canada Mortgage and Housing Corp.

Ms. Bryden: But the need would certainly grow if demolition of moderately priced rental accommodation goes ahead.

Alderman White: Yes, the city has approximately 4,000 households on its waiting list. That is simply for the geared-to-income housing that Cityhome provides. In order to meet that demand under the program, we would have to build about 16,000 units.

The Ontario Housing Corp. has a separate waiting list which, again, is at the 5,000 level. The demand is incredible. Losing the buildings Alderman Johnston refers to on Eglinton Avenue would simply negate everything we could possibly accomplish.

Mr. Chairman: Thank you very much, Alderman White. Time presses on. Might we hear from Ms. Diana Hunt, executive member of the Federation of Metro Tenants' Associations? I believe you have no exhibit or handout for us, is that correct?

Ms. Hunt: I will explain that.

Mr. Chairman: Good. Carry on.

Ms. Hunt: Good afternoon. I am here on exceptionally short notice and that is why I have nothing in writing for you. We felt it was important that we make even a token appearance today because, as far as we know, we are the only community group that has actually managed to be scheduled. We felt a community group's input should probably be dealt with, along with others.

We will shortly be providing you with detailed written submissions. The federation has done a great deal of discussing, policy making and work on this issue and we will provide you with something in writing. Because I did not know I was doing this until four or five o'clock yesterday afternoon, my remarks will be brief and simple. If you ask questions, I will probably be embarrassed.

Mr. Philip: I have never seen you embarrassed or at a loss for information.

Ms. Hunt: I will briefly go over what you have heard a number of times, but which is the crux of this matter.

In the city of Toronto you have a 0.3 per cent vacancy rate. In case no one else has pointed it out, that means you have to walk past 1,000 apartments to find three vacant. I am sure a lot of people do walk past hundreds of apartments to find one vacant.

The city projects an increasing demand for rental housing in the future and no doubt that has something to do with the phenomenon of people not being able to buy out of the rental market any more. There is no construction to speak of. The existing housing stock is disappearing, not only through demolition, but through "deconversion."

Affordable rental housing is disappearing because of section 128 of the Residential Premises Rent Review Act and rent review guideline 9, which means there is a tremendous incentive for landlords to turn affordable units into luxury units.

12:40 p.m.

Housing that is disappearing is either not being replaced or it is not being replaced by rental housing, affordable or not.

The problems of rental construction in the city are well known to the Minister of Municipal Affairs and Housing (Mr. Bennett), who I understood was stuck with administering the Ontario rental construction loan program. I understand that as far as the city of Toronto is concerned, the program totally fell flat.

The cost of construction is so much higher in the city than it is anywhere else, and even that loan program was not sufficient. You have the phenomenon of a city which is having as difficult economic times as other places, but has the additional problem of the prohibitive costs of construction.

In view of all those things, it is tragic and illogical to permit the destruction of existing affordable rental housing. That is what is disappearing.

Second, the bill you are discussing is, in its concept, consistent with a number of things that make it appropriate for the committee to pass it.

The province has taken steps to attempt to guarantee adequate supplies of affordable housing. There is the rent review program which came in response to the spiralling rent problem when there appeared to be a housing shortage starting in 1975.

There is the Ontario rental construction loan program. There is the new loan program for first-time buyers which, hopefully, will take some pressure off the rental market.

Knowing that the units being lost to demolition are not being replaced, and that it is conceivable the programs the province has already instituted may be undercut, it seems entirely consistent with the things the province has already done to give this power to the city of Toronto.

In the past, the province has given substantial powers to the city to control the use of property by delegating the power to make zoning bylaws.

Whenever I have occasion to discuss this demolition control problem with people who tend to disagree, they say: "It is just like imposing expropriation without compensation." You are going to hear that, so I am going to deal with that now because I might not be here when you hear it.

I do not think that is accurate. There is a certain level of maximization of profit you may be separating from other pursuits of profit. But that is something the province has already permitted the city to do.

When you talk about size, use, and location of a building and what other amenities are going to be provided along with it that do not directly affect the market value, you are talking about cutting down somewhat on the developer's ability to maximize his profit. Giving the city the power to do that as far as demolition goes is nothing new.

Obviously you are looking at a balancing of interests. On the one hand you may feel reluctant to interfere with somebody's ultimate maximization of profit. On the other hand, people are being "dehoused." There is no way around that. The units being lost to demolition are not being replaced, at least not for the people being evicted from them. You are going to have to house those people.

The city, working with the powers delegated to it by the province and through other means, has been arduously attempting to cope with the housing problem in the city for a number of years. At this point they have reached a brick wall and they will not be able to achieve their goal unless you help them.

Their having demonstrated a commitment to pursue this, it is entirely consistent that in order for them to deal with this extra demolition problem, as well as "deconversion"--conversion to

condominiums and other things discussed here--they should also have the power to control demolition.

Therefore, it seems to me that in at least three ways it is, first, consistent for you to give the city this power and, second, it is necessary you give the city this power otherwise you are undercutting things that have already been done and powers that have already been given. That is the essence of what I came here to say and our written submissions will support that in more detail.

However, I did want to add to Alderman White's concerns, Mr. Chairman, about permitting people to speak. I understand Parkdale Community Legal Services, the office I work at, and Metro Tenants' Legal Services, have not been guaranteed a hearing. I am sure there are many other community groups that would like to have a hearing. I sympathize with Mr. Philip's concerns about getting the thing dealt with as quickly as possible, but I really think the significance of this issue warrants a proper airing.

Mr. Chairman: Good. Thank you very much Ms. Hunt.

Mr. Philip: One of the problems your association has been concerned with has been illegal rents or illegal activities on the part of landlords, such as key deposits and things like that. If this bill is not passed, do you feel it will encourage that kind of phenomenon; people in desperation for accommodation bribing or landlords seeking bribes or illegal ways around the present Landlord and Tenant Act?

Ms. Hunt: I keep telling people, to their great surprise, that I have never seen a key deposit. I have never heard of a key deposit from anybody I have dealt with. I think people who want to talk about key deposits are people who are trying to discredit rent review. The fact I have never seen any means I do not discredit rent review. I have seen a lot of illegal rent increases and yes, I think it is quite conceivable that as people get more and more desperate, they will start bidding for a vacant apartment with other prospective tenants.

One way to deal with that is to institute a rent registry so new tenants can check up on rents and make it quite clear that whatever it is the landlord gets now, you do agree to pay when you move in. You can check out what the base rent was.

Second, let us control the demolitions. Let us have lots more money for lots more housing in both the private sector, if necessary, but most especially the public sector in all its many and varied forms. This bill is a very important component of all of that.

Mr. Philip: I would consider paying nine months' rent in advance to be a key deposit and there is a such a case on Kipling Avenue which I am aware of, at least one case.

Basically, as I understand your argument, one of the key arguments you have made is that the government has acknowledged there is a problem. They are taking certain steps, some of which I would say are working and achieving their objectives. Others are, at least, an attempt to deal with that problem. Without putting this

in, the government would be undermining its own programs. Is that--

Ms. Hunt: That is right.

Ms. Bryden: I think you have made some very cogent points, half a dozen really, as to why this legislation should be adopted. The one that struck me as the most cogent is that people are actually "dehoused" by the demolition legally going on under the present law.

Then the question is: who is responsible for those people? There is not very much choice for them in the open market. As my colleague was saying, there may be pressure on other rents to go up and therefore they cannot find anything equivalent to what they now have.

What I would like to ask is who do you think has the responsibility for housing those people? Should it be the city of Toronto, which has some programs for providing affordable housing, or should it be the province, or do they both have a responsibility and to what extent?

12:50 p.m.

Ms. Hunt: That is sort of a constitutional question. I would suspect at this point the responsibility probably follows the funding. There are some provincial agencies--first, there is the Ministry of Municipal Affairs and Housing, obviously, but there are provincial agencies--that get funding to do things and there are the municipalities and municipal agencies, like welfare, which get money to do things.

If you are talking about some kind of an ability to pass the buck back and forth for housing, I do not think anybody is going to get away with doing that. You are going to have a very serious problem, a very urgent problem, and it is going to be the kind of situation where you have got people camping on your front step and saying, "Look, I do not have housing."

It is really important for the city and the province to work together to resolve the problems. The city perhaps has some expertise, or some close contacts, or some understanding how the city works, that is necessary to resolve the problem. The province has a lot more money and more legislative powers that the city wants it to delegate to them. So I think it has got to be team work.

They should also go to the federal government for more money for third sector housing. Again, it is only pulling together and sorting out the problem and deciding who has got what to contribute, that will resolve the problem.

Ms. Bryden: You are saying it is a trilevel problem but members of this committee certainly have a definite responsibility for those people who are being "dehoused."

Ms. Hunt: No question about it.

Ms. Philip: One last question. Since your association

represents organizations all over Metro and not just Toronto, is this primarily a Toronto problem, or are the stories we are getting out of Scarborough and York making it a much broader problem?

If it is more than just a city of Toronto problem, how will we deal with the argument the ministry will use, that they are against specific legislation when more general legislation might be introduced?

Ms. Hunt: I think that is a very good question and I will make sure we will deal with it in our written submission. At this point, I have no statistics about the borough and I think it is very important that we have those statistics before we attempt to answer that question. It is certainly something we will address in our written submission.

Mr. Philip: It may be possible that if the city of Toronto gets this power, maybe even Etobicoke will follow suit some years down the line.

Ms. Fish: Will it be requested?

Mr. Philip: I do not know.

Mr. Spensieri: I think we can all be persuaded, Ms. Hunt, that it is consistent and necessary. I would like you to zero in on what you would consider the proper criteria for a self-destruct or end of this legislation. We have heard people indicate it should end when there is a vacancy rate above a certain magic figure. We have heard Mr. Fram draw the distinction between preserving it for as long as there is rent review legislation as opposed to rent control. I presume that simply means legislation which allows automatic increases. My colleague from Parkdale suggested that perhaps it should end when the six per cent automatic rent increase is lifted.

What do you consider to be proper criteria for the self-destruct of this legislation? I think we all recognize here that it is of a temporary nature. It is to address a drastic problem, and certainly none of us would expect it to remain as an ever-present incursion into the property rights of property owners. So, what do you think are proper criteria?

Ms. Hunt: Again, this is something we will deal with in more detail in writing. Perhaps the one part of the bill that I do not quite understand and I am not that happy about on first reading is the part about tying it to the continuation of rent review.

Mr. Spensieri: It is confusing; it is imprecise.

Ms. Hunt: Yes. It is confusing, it is imprecise and I am not sure rent review is the problem in any kind of a sense or that the disappearance of rent review or some form of control is necessarily going to mean the end of the problem. Surely the problem is the vacancy rate.

In some sense I feel it ought to be tied to the vacancy rate, because when the vacancy rate gets to a healthy level--it certainly depends who you talk to; I think the city thinks 2.5 or three per

cent. I can remember Karl Jaffary telling me quite firmly, years ago, that it was five per cent.

However, looking at the vacancy rate is a very important thing and until that vacancy rate does something healthy, you cannot afford to get rid of some of these loophole stoppers.

There are other things that you could look at as well: how much money is available to the city at any one point to start building new units; how much land is available to the city at any point on which to build new units.

Presumably you would not want this protection to stop before the problem resolved itself or there were means to resolve it.

Mr. Philip: I have a supplementary on that.

If I am not mistaken, you and I have talked before about the fact that there is research which indicates that the pressure for conversion actually increases after rent review comes off, rather than during rent review. In fact, that happened in Alberta.

The economics are such that there is greater pressure on people who are paying very high rents to buy a unit if they can possibly afford it, even if it means 50 per cent of their income, rather than going for accommodation at a more reasonable level under rent reviews.

Is that your experience, or is it somebody else I was talking to about that?

Ms. Hunt: You may have been talking to Dale Martin and, again, that is something we can certainly look at.

However, you have to remember that what happens to the market is really dependent upon what the vacancy rate is when review or controls are lifted. When you remove the control, or whatever it is, do you have a free market operating or are you still in a situation where it is really an owner's market?

Mr. Philip: I just recall sitting in on a seminar at the First International Condominium Conference in which a developer from Alberta was saying, "Get rid of rent review and that is when conversion will really make you a buck." Apparently that has happened. Needless to say, I did not introduce myself as the New Democratic Party housing critic sitting there.

Mr. Chairman: Thank you very much, Ms. Hunt, ladies and gentlemen. We are finishing relatively on time.

Shall we then adjourn to reconvene tomorrow, following routine proceedings, when we will have Alderman Johnston back with us?

Can we please get here on time? We are really pressed for time tomorrow with the witnesses we have.

The committee adjourned at 1:02 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CITY OF TORONTO ACT

THURSDAY, JUNE 3, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Substitutions:

Fish, S. A. (St. George PC) for Mr. Eves
Philip, E. T. (Etobicoke NDP) for Mr. Renwick

Also taking part:

Bryden, M. H. (Beaches-Woodbine NDP)
Rotenberg, D., Parliamentary Assistant to the Minister of Municipal
Affairs and Housing (Wilson Heights PC)
Van Horne, R. G. (London North L)

Clerk: Arnott, D.

Staff: Revell, D. L., Legislative Counsel

From the Ministry of Municipal Affairs and Housing:
Donaldson, B. T., Senior Policy Adviser
Maitland-Carter, G., Solicitor, Legal Branch

Witnesses:

Fink, R., Private Citizen
Gardner, K., Private Citizen
Johnston, A., Alderman, Ward 11, City of Toronto

From the Toronto Real Estate Board:
Lord, I., Solicitor
Smith, K., Solicitor

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, June 3, 1982

The committee met at 3:39 p.m. in committee room 1.

CITY OF TORONTO ACT
(continued)

Resuming consideration of Bill Prl3, An Act respecting the City of Toronto.

Mr. Chairman: I see a quorum. I would remind everybody that we have to break at 5:40 p.m. for voting in the House for private members' business.

We have three witnesses this afternoon. Alderman Johnston may be a little shorter than otherwise because she did have a reasonable amount of input yesterday into the proceedings. Perhaps if the first two groups of witnesses could aim towards three quarters of an hour each, that would keep us in some kind of order today.

Are Mr. Smith and Mr. Lord here? Would you come up and take a seat at the end by one of the microphones? May I point out to the members of the committee that exhibit 8 is being handed out. This is a brief on behalf of the Toronto Real Estate Board. Mr. Smith, would you identify yourself in the capacity you have with the board?

Mr. Smith: I am research director and secretary of the committee that looks into these matters.

Mr. Chairman: Do the members mainly have these submissions now? Mr. Smith, would you carry on, please?

Mr. Smith: I am not making a presentation. Our solicitor, Mr. Lord, will be.

Mr. Chairman: Fine, thank you. Mr. Lord.

Mr. Lord: Thank you, Mr. Chairman. I have prepared two documents for the committee. One is a brief that does a clause-by-clause review of Bill Prl3, and the second separate extract is a number of definitions from the Residential Tenancies Act to which I will refer.

Mr. Chairman, members of the committee, on behalf of the Toronto Real Estate Board I have about four points which I would like to bring your attention to with respect to the bill. These are not in the order of the written brief, but they are found in the written brief in one or other form.

The first concern I would like to express is that it is the position of the real estate board that the bill, as drafted, interferes with the market mechanism for quasi-planning, an unrelated purpose in our submission to rent control. Therefore, the instructions I have from the zoning committee of the Toronto

Real Estate Board are that the board does not support this bill.

The points I wish to address are: the scope of the application of the bill on affected properties; second, the extent of the discretion that the bill would purport to give the council of the city of Toronto; third, the impact on contracts that might be negotiated, agreements of purchase and sale effectively, the impact of the bill on conveyancing; and, fourth, what I call not strictly natural justice deficiencies, but what are in the nature of natural justice deficiencies in the drafting of the bill. On the basis of those four points, I would like to speak to the bill.

First is the scope on affected properties. The bill defines dwelling unit. I am sure you have had discussion on the definition to date. It defines dwelling unit very broadly. It is any type of dwelling unit that has a culinary facility with it. The bill would purport to give to the city the power to refuse demolition permits to any building that has six or more dwelling units, however defined, regardless of whether or not they are under rent control and regardless of whether or not they have anything to do with rental apartments.

I have provided to you the second extract, the extracts from the Residential Tenancies Act, just to have in front of you the types of accommodations that act exempts from rent control. If the purport of this Bill Pr13 is to prevent the demolition prematurely of rental units, then there is no need for it to apply to all types of dwelling units that are not under rent control. As a first submission at the very least on behalf of the board, I would like to suggest that the definition of dwelling unit in the bill be coterminous with that of the Residential Tenancies Act. In other words, that all of the exemptions referred to in the Residential Tenancies Act be imported into Pr13.

I am not suggesting we support the bill but I would urge you make an amendment to it at the very least in that regard. You will see in sections 1, 4 and 134 of the extract from the Residential Tenancies Act the nature of accommodations that do not fall within rent control.

In the brief, I have listed them at the bottom of page 1, suggesting that this bill should not apply to permit the demolition of apartment hotels, boarding and lodging houses, university residences, co-operatives, condominiums, rest homes, homes for the aged, nursing homes. Those are the types of things that are exempted from rent control.

The submission on that point is that the breadth of the control to refuse demolition being sought by the city is, in our submission, far too extensive, the scope and application on affected properties far too broad.

The second aspect is the discretion being vested in the council of the city of Toronto if this bill is enacted.

The point I wish to make on that area is that the discretion to refuse a demolition control permit appears to be unconfined. Although there is language in the bill that suggests there is a

sunset clause as long as rent control is offered in Ontario, it is not connected with council's refusal to issue a demolition permit. There is no sanction, there is no scope fetter on council.

The council can refuse to issue a demolition control permit on any matter unrelated to rent control and you cannot hold the council accountable to a rationale for its rejection on the basis that rental units may be lost.

Our concern is that any political issue affecting the building that is before the council can be argued as a rationale for council's refusal of the building permit. That could mean the design of the proposed replacement building; that it does not meet someone's objective; that the ratepayers do not support construction activity on the street; that they do not support the number of units that might otherwise be permitted by the zoning or official plan in place.

Any kind of argument can be raised and it would be sufficient for council to make the decision that would be politically expedient to refuse this demolition permit.

We are therefore submitting that the discretion is far too wide in council on that basis and that discretion should be confined to the merits as to whether or not the building as it exists at the time of the application, and the replacement structure, have a demonstrable affect on the provision of rental accommodation in the city.

The way the bill is drafted, Mr. Chairman, there is a complete, unfettered discretion, a political decision on whether a demolition permit should be issued. My submission is that this is inappropriate.

The third major concern that the board and committee have with respect to the bill is the interference it may have on contractual activities of buyers and sellers of residential and commercial residential properties.

As I understand the planning system in Ontario and in the city of Toronto, the official plan and zoning bylaw create and establish the uses permitted on the property. A prospective purchaser of that property knows, looking at the official plan and zoning bylaws, what uses it can be put to. If there is a significant development or redevelopment potential he makes his judgement decision on the market value of the property, premised upon those known components.

If there is a power in the city of Toronto that is not clear and visible as zoning and official plan policies are; if in fact there is a discretionary power that is invisible and intangible, a right in the city to refuse a demolition permit at some later time, the prospective purchaser does not have an ability to anticipate that refusal. Therefore, the effect on market value is to put into the equation a complete unknown.

3:50 p.m.

It is our submission that this discretionary control grafted

on top of the zoning and official plan policies is a detriment to the vested rights of a property owner without him having any ability in anticipation of the purchase of a property to know whether or not he is going to have to apply for a demolition permit, have it refused and appeal to the Ontario Municipal Board with all of the attendant delays. It throws an uncertainty factor into the equation that in our submission is inappropriate.

In fact, it is our submission that the remedy using demolition control to, in an indirect sense, maintain the residential housing stock is worse than the cure. The remedy throws at issue every purchase and sale transaction with a redevelopment potential in a residential property unnecessarily.

There may be mechanisms that can make a vendor responsible for obtaining the demolition permit, but that is going to extend the closing time. It is going to inhibit the free transaction entering into agreements of purchase and sale.

Mr. Elston: How does that differ from a situation where you put an offer to purchase in on a piece of land, conditional upon rezoning or a change to an official plan? Do those things not do virtually the same thing as you are talking about this demolition procedure doing?

There is always a unknown factor if you have to rezone or redesignate land and I am wondering how that is different from the current situation with that. How much more of an unknown factor are we putting in?

Mr. Lord: It is the same type of animal. The numbers of transactions entered into, conditional upon rezoning and official plan amendments--I cannot give you any statistics, but you will be surprised to learn that they were a large proportion of transactions.

Certainly severance applications are that type of thing, conditional upon that, but they can be affected much quicker and get to a committee of adjustment.

Mr. Elston: Plus they can also go on to the Ontario Municipal Board appeal proceedings and, up to the present time anyway, they could go on to cabinet appeals for instance.

We are looking at the same sort of time drag that you might get in those processes which might also reflect on this demolition process. So it is not really a new, unknown factor that we are talking about here.

Mr. Lord: The concept is not unknown. The power is unknown.

Mr. Elston: That also reflects back on one of your first comments, which was that this legislation would have a detrimental--

Mr. Philip: Mr. Chairman, I am finding it very difficult to hear. I do not know whether the machinery is not operating or whether the two people speaking are not speaking into the microphones.

Mr. Elston: Sorry, Mr. Philip. The other comment that you made was that it would reflect on the quasi-market system already in operation. I do not think there is much of a difference between the type of procedure set up here and the type of procedure in existence with severance applications or conditional offers for other reasons.

Is there a difference, in your opinion, between the procedure being set up under the auspices of this proposed legislation and what is already existing now in other areas?

Mr. Lord: Yes, I think there is quite a significant difference. In the case of a rezoning or an official plan requirement for a severance, that component of the transaction is known in advance. The mechanism for the decision is known and the risk can be evaluated.

Whether or not a person can get to the first step of a demolition of a structure which he wishes to replace--if that is his objective--is in my opinion a different attribute to a decision-making process from whether or not he needs a severance, an official plan amendment or a rezoning. I see a distinction.

Mr. Spensieri: Just as a supplementary to that, Mr. Chairman, when you say that this proposed bill would frustrate a purchaser's redevelopment or upgrading potential, what you are really saying is it frustrates his demolition potential. It would be a pretty imprudent, ill-advised purchaser who would not put in a condition about the demolition permit being available in any event if he is going to engage in any immediate redevelopment activity.

By virtue of that, almost any purchaser would put in a demolition condition and when he finds out the property is subject to demolition control, that is the end of it right there. So how are purchasers really being prejudiced in these agreements of purchase and sale?

Mr. Lord: The prejudice occurs both from the perspective of the purchaser and the vendor. If the vendor is faced with a condition of the purchaser that they must obtain a demolition control permit, then that requirement can markedly affect the saleability of the commodity, the product, the building or the land.

It does that because the uncertainty that is attendant with additional control frustrates what development rights are known. Apart from this 50 per cent limitation, if you have zoning and an official plan, you ostensibly have a development right. You can purchase that, you can appraise it and you can come to a meeting of the minds on it.

If you add on to that an additional level that the development rights, which are out and public and have gone to municipal board hearings and otherwise, can be frustrated, you have drafted on a planning tool. The purchaser or the vendor has no control. He is put behind the eight ball to obtain that permit. Then there is the whole question of who is going to carry that, how much delay is going to be added and what is the cost of the delay.

Mr. Spensieri: To your mind, then, there is no distinction between a development right and a right to demolition.

Mr. Lord: I believe with the provisions in the Planning Act as they now exist, that if the zoning in official plan permits a rebuilding permit, the demolition control permit should be granted as of right.

Mr. Chairman: Mr. Lord, you mentioned a word there that was in my mind, "appraisal." Up to this point, you have dealt with an offer to purchase which contemplates a certain closing whether it is conditional or not. What about the question where there is not a sale or purchase imminent but where it is an appraisal matter? Is there not a distinction?

If it is an appraisal matter, is there not a distinction plan and the zoning bylaws as compared with this matter that cannot be put to a condition at this point? On an appraisal there is no condition that will be met prior to closing.

Could you comment on the appraisal and how this bylaw affects the value? If a client of yours asked you to retain a firm of realtors or appraisers to come up with an appraisal, for whatever reason, how would this affect it?

Mr. Lord: My perspective of appraisals would be that the instruction to the appraiser would be to evaluate the market value of the property. He has a number of things to look to when he does that, primarily the use of the location, but important also are the controls that are in place, the zoning and official plan. They are known and ascertainable. The highest and best use may require additional zonings or official plan amendments. That is a component of the appraisal that enters into the uncertainty of the quantum eventually arrived at.

If you can add that the matter is in a demolition control area and fits the criteria of the Planning Act, there is no problem with appraisal. He can do it and he knows that if it is rezoned, the demolition control permit does not enter the appraisal.

If Prl3 is enacted, that protection is not there. He must, in his mind, make an assessment of the probability of a refusal of the demolition permit based upon the existence of rent control legislation, maybe the neighbourhood attitude towards the building or whatever. He has got to enter in a whole list of factors. I do not know how an appraiser would define it but, in my opinion, it would be an unknown quantity that could not be quantified.

That is important to a municipality as an expropriating authority. They, too, have to perform appraisals if they expropriate property. If the property is subject to demolition permits, they have that uncertainty as well.

4 p.m.

Mr. Philip: But this can happen with any property. There can be any one of a number of factors that either push up the value

or lower the value, depending on any one of a number of factors. This is simply one extra factor.

Mr. Lord: This is a different factor. In the controls in the official plan and the zoning, there is a very sophisticated series of approval mechanisms. There are rights to hearings and appeals. They are known, they are written on the paper, I can look and read a zoning bylaw and assess my uses. If it is in the process of changing, I can tell where it is changing. I can inject myself into that system. In Bill P13 there are no protections of that nature. There are no rights to a hearing before council.

Mr. Philip: You have an appeal to the Ontario Municipal Board.

Mr. Lord: It is my opinion that appeal would have to be exercised in almost every circumstance where council either cannot get to the application within the 40 days, or whatever the number is, or the ratepayers around there or the tenants come and object to the demolition.

It forces the purchaser or vendor or land owner to be an appellant and to fight a piece of provincial legislation, not P13 so much, but rent control. It casts upon that land owner an obligation--I would not know how to assess his ability to say rent control. He has to demonstrate an inventory in the city of Toronto and say, "Demolition of my building is not going to affect this existing inventory." He has to do all kinds of studies just to get to the point where he exercises his development rights that may already be approved.

Mr. Philip: But the inventory is done by provincial and municipal councils. Two minutes of research can give you an inventory. You are not surely saying that is a terribly hard thing to do. It is agreed as to what a reasonable inventory is, a reasonable vacancy rate, I guess.

Mr. Lord: Say my client is a land owner with seven apartment units he rents at \$200 and \$250, and he wants to redevelop them and rent them at \$380 to \$420. He has to do an inventory of that type or strata of income groups in the city and how the existing stock of units is evolving, disappearing or increasing.

That is an incredible obligation to place upon my client, to get somebody to go out and make that assessment before the municipal board. Surely the board has to hear the appeal on the merits, and one of the merits is whether or not those seven units are going to materially affect the stock of units in the same price strata, or size strata, whatever your criterion of measurement is.

Mr. Rotenberg: Moving away from the appraisal, one of the inputs into having a stock of rental housing within the city of Toronto is that there are proven investors who might want to come and buy buildings and fix up buildings and maintain buildings, and so on. If we accept that, how would this legislation affect prospective investors or prospective purchasers, not anyone in particular but someone who is going to come to Metropolitan Toronto and say, "I want to buy and manage rental stock of apartment

buildings"? How would this legislation affect a purchaser who might want to come into a building which may be now not slated for demolition--he just wants to come in and be an investor and run apartment buildings in the city of Toronto?

Mr. Lord: There are a number of attributes to that. Let me take it that he is an investor, not an owner existing.

Mr. Rotenberg: I am talking about someone wanting to come in. As I say, one of the keys to keeping rental apartments going, or even building, is the fact there is fresh money coming into the market all the time in order to maintain and increase the stock.

A purchaser who comes in will normally fix up a building. Where the present owner has probably let it go, new purchasers coming in may want to fix it up and refurbish it and so on. I think that is a valuable asset to any community. I am wondering how this would affect that kind of a market.

Mr. Lord: My gut reaction--maybe that is what the city is attempting indirectly to accomplish--would be that it would deflect such an investor away from the city of Toronto, the corporate entity, to its boroughs. It seems to me that that is a loss for the city of Toronto.

If capital or investment opportunities are what the city ostensibly wants to regenerate its infrastructure, to pass a piece of legislation which is an impediment to them investing because it extends delays of approval, et cetera, they will go to Etobicoke or North York or somewhere else and attempt to build apartment or rental units in those municipalities. As a gut reaction, that would be our perception.

Mr. Rotenberg: I am not talking about someone who wants to buy a building to demolish it, I am talking about someone who wants to buy and maintain an existing building. Would it still have the same effect?

Mr. Lord: Sorry, buy and maintain.

Mr. Philip: Mr. Chairman, I find the question completely confusing. I find it hard to understand how the parliamentary assistant to the minister can be suggesting that the purchase of an old building by any investor either increases or decreases the housing stock. I am not quite sure how. There are other laws, such as the City of Toronto Act, that ensure the upkeep of buildings in that city. I fail to understand his question. I can see that the real estate board is as confused as I am with the question.

Mr. Rotenberg: I am not too sure of the procedure in this committee, but normally if I am asking a question it is not incumbent upon another member to try to interpret my question.

Mr. Chairman: Yes, Mr. Philip, in fairness, there were questions you gave yesterday that were very leading. In fairness, the parliamentary assistant can ask his questions.

Mr. Philip: Mr. Chairman, I always ask leading questions. That is part of the game of politics.

Mr. Rotenberg: Mr. Chairman, if Mr. Philip has trouble understanding, I will explain it so even he can understand.

There are buildings out there which meet the minimum standards and which do not necessarily have to be fixed up but could be refurbished, which meet the bylaws but could be better. An owner has been an owner for a number of years and has neglected it, not to the point of being in violation of the bylaws, but neglected to the point it is not a good building. It is a building which may not be scheduled for demolition. There are investors in Metropolitan Toronto who might be looking for these kinds of buildings, and because they are a little bit run down they might be a little better priced.

For the investor who comes in and wants to buy a building, refurbish it and maintain it for the present, but knowing this is hanging over him some time in the future, would this kind of a law inhibit that kind of investor from coming into Toronto, not because it is going to affect his present situation, but it would be hanging over him some time in the future? Would that inhibit him from investing in the city of Toronto? Is that clear, Mr. Philip?

Mr. Philip: I think it is a silly question, but it is clear. I do not doubt it.

Mr. Mitchell: It is all in the eyes of the beholder.

Mr. Philip: It is good that the parliamentary assistant at least showed up today when the developers are here. He did not when the tenants were here yesterday.

Mr. Chairman: Mr. Philip, we do not need that. Mr. Lord, do you want to respond to the parliamentary assistant's question?

Mr. Lord: Mr. Chairman, I think my answer would be the same.

Mr. Philip: Why does he not show up when his own constituents show up about the demolitions in his own riding?

Mr. Lord: A prospective investor in an existing building, one with redevelopment potential or one that was to be demolished and redeveloped, would be deflected by this bill because of the additional level of uncertainty it places in his equation of his prospective returns. It is an uncertain element. It requires another discretionary decision to be made by a council over which he has no control and, by this bill, no right to appear before.

Mr. Philip: Supplementary: would you not agree, sir, that the turnover of buildings has an inflationary effect on the rents in a particular area and, therefore, any action that might even discourage the sale and resale of buildings might be to the benefit of that community and the people living there if not to the investor?

Mr. Lord: I am sorry, I am not competent to answer. The lead part of the question spoke to the effect on inflation. I am sorry, I cannot answer. I do not know.

Mr. Spensieri: Mr. Lord, we have all had clients in the past who bought what they thought were pieces of land which were right for redevelopment or upgrading or whatever. For instance, in the suburbs you often have a client who purchases a property and it turns out to be designated as an historical site a week or so after the closing. We have had clients who purchased land which suddenly became part of the green belt or part of the parkway belt.

How is the type of legislation being proposed here any different from all those other calamities which may befall the best of intentions? Why should this be such a stumbling block or such a difficult thing to swallow when we have swallowed much larger controls over land use?

Mr. Lord: I do not agree it is the same; it is much larger. In the situations you gave, at the time of entering into an agreement of purchase and sale or its closing, the zoning, the official plan and the historical designations can be ascertained. We do searches for those things all the time.

Mr. Spensieri: It can happen after closing.

Mr. Lord: Then the man takes his licks. He has to make searches as to whether there are intentions and then he has his rights to participate and resist those designations, rezonings or official plan amendments. But with this one, it has a different character. It is a control, hanging like a club over the land, that can be imposed, if the property qualifies, at somebody else's discretion, by council's discretion, when he buys that building and comes in for a demolition permit.

If you say that can be ascertained by backing it up, by forcing the vendor, the owner of the land, to obtain the permit prior to the agreement of purchase and sale, that invites an expense and uncertainty. However the two parties negotiate it, it adds delay.

4:10 p.m.

Ms. Fish: I have a supplementary to try to pursue the point I think I heard you make a couple of times, Mr. Lord, about the concern you are expressing on an apparent lack of hearing, an apparent inability, as you are suggesting, of the land holder to enter into the debate and the consideration of demolition.

I am a bit puzzled by that suggestion in view of the fact I would have thought the operation of this bill, as so many other decisions of council which are virtually all discretionary and would affect the public, would likely be subject to the Statutory Powers Procedure Act. The regulations and requirements therein are, I believe--I am not a lawyer--quite stringent with respect to notification, hearing and participation. I would have thought that, coupled with the appeal procedures that are available, there would be a rather substantial measure of protection and opportunity to participate that is provided by provincial statute across the board.

Mr. Lord: As I understand the law in Ontario, the Statutory Powers Procedure Act imports natural justice at law into the final procedure, the Ontario Municipal Board appeal. It would not require council to maintain all of the rules of natural justice. That is the Zadrevic case. That is applicable to zoning and to official plan amendments, where there is not a final power of decision in the body, such as council, making it.

Where there is an appeal right, the Legislature is deemed to have transferred the final decision-making power to the municipal board. So natural justice protection, in my submission, if Bill Pr13 were in effect, would apply only at the municipal board.

Mr. Rotenberg: The Planning Act simply says that the Statutory Powers Procedure Act does not apply under the Planning Act.

Ms. Fish: This is a critical point that has been raised. The matter of an opportunity to participate and be heard is fundamental. I wonder if it would be possible to redirect the question to Mr. Fram, who is a solicitor for the city, to gain some understanding.

Mr. Fram: As a question of fact.

Ms. Fish: Yes, as a question of fact.

Mr. Fram: I do not want to interfere with my friend. On a question of fact, the city solicitor's rule is that the Statutory Powers Procedure Act does apply to section 45 proceedings. In fact, we have hearings, and I have the notices with me that the applicant gets.

There is full power to be heard, to appear by deputation and to appear before what is now called the neighbourhoods committee. It has had different names. The hearing is before that committee and the recommendation is made by council. This is another part of section 45. Notwithstanding there is an appeal to the Ontario Municipal Board, there is a hearing and there will be a hearing with respect to this section, a hearing before the committee and a recommendation to council.

That has been the city solicitor's ruling and it is just a question of fact. I do not want to interfere with my friend.

Mr. Revell: My question could be addressed either to Mr. Lord or to Mr. Fram.

Mr. Chairman: Perhaps to Mr. Lord since he is appearing.

Mr. Revell: With respect to the hearing, suppose the subsection was amended to provide specifically that the council may, after affording the applicant for a demolition permit an opportunity to be heard. That would definitely tie in with the Statutory Powers Procedure Act which says that the act applies where there is a statutory power of decision and it provides for a hearing.

Would that improve your client's position?

Mr. Lord: I think that would better serve the bill. In my submission, it does not in any way change the representations of the committee that the power being requested is inappropriate.

Mr. Revell: I guess my next question really goes to Mr. Fram. Would the city object to putting in a provision that there shall be an opportunity to be heard?

Mr. Fram: I would have absolutely no objection to it at all. That is exactly what they do, anyway, so what difference does it make? If you want to put it in, put it in, because we will have a hearing anyway.

Mr. Rotenberg: If I may correct the record, I was incorrect a few moments ago. The Statutory Powers Procedure Act does not apply to most matters under the Planning Act. It does apply to a hearing under the demolition control under the old section 45.

Mr. Fram: That is why I gave that rule and that is why we have the hearings.

Mr. Revell: May I interrupt for just one second?

Mr. Chairman: Yes, certainly.

Mr. Revell: I think Mr. Fram and Mr. Rotenberg are right about section 45, but the problem is that we are not dealing with section 45 of the Planning Act any more, and I think Mr. Lord is probably correct, there is no statutory requirement under subsection 45(2) for a hearing.

Unless there is an implied requirement for a hearing, I think Mr. Lord may be in the right position. Perhaps my suggestion of a possible amendment might be considered at the appropriate time.

Mr. Fram: I have no objection to the amendment. To my mind the way this section reads is really, "In an application to the council under section 45 the council may..."

That is what is implicit in that section. It just cannot stand all by itself. They have to come to the council for a demolition permit under section 45.

Mr. Revell: We have just not withstood section 45, Mr. Fram.

Mr. Fram: We have not withstood it for the purpose of subsection 45(6). We have not withstood it for the purpose of it prevailing, because they say council may refuse a demolition permit. They have to get to the council and that is how they get there, by an application under section 45.

Mr. Rotenberg: The solicitor from our ministry has indicated to me that the Statutory Powers Procedure Act applies unless it is specifically exempted. A number of sections of the Planning Act are specifically exempted because this is not specifically exempted in this Pr bill.

No matter what anything else says, it would apply because there is no exemption to it. It does not refer to certain sections in the Planning Act so that-- The lawyers may disagree, but our ministry's solicitor seems to agree with the point Mr. Fram is making.

Mr. Chairman: I think Mr. Revell has made the point that that should be considered on clause by clause. Mr. Lord, would you carry on?

Mr. Lord: Yes, Mr. Chairman.

On the last point I do not disagree with any of the discussion that has occurred. Bill Prl3 is freestanding and I revert to what I said earlier about the law in Ontario, which is made on the basis of the Planning Act with respect to zoning and municipal board approval. The law under the Statutory Powers Procedure Act is that when a statutory decision is being made, natural justice prevails. That is the basic law, the statutory law.

Common law says if there is a decision that is made at one level and an appeal level to the municipal board on the same decision then the natural justice attributes of the right to a hearing--a right to representation, to make a case, to call witnesses, to cross-examine, all of those attributes--are not going to be required by the courts in Ontario at the first level. They will be required at the second level.

My submission stands that Bill Prl3, as it is now drafted, does not come under the guise of section 45 of the Planning Act, or I would not be here because I would say to you, if my man had a right to a building permit I would not be too concerned. If he had a right to a building permit, the Planning Act says he is entitled to a demolition permit.

Bill Prl3 is a freestanding piece of private legislation and it takes away that protection. I was concluding on the fourth component, which I categorized euphemistically as natural justice deficiencies.

The first one--and it is probably not correct, since we have a lot of lawyers in the room, to call it natural justice. My first concern is the delay that is occasioned.

This bill would, in all likelihood, require a land owner or a purchaser or a vendor to make an application for a demolition permit to the city.

4:20 p.m.

That could only be dealt with by the procedures the city of Toronto has in place to send the matter to a committee, or a committee of council, as Mr. Fram has indicated. There will be delay in that because committees do not sit frequently during the summer. There could be significant delay.

In any event, the committee system makes provision for notice procedures and anyone can be invited to comment on the application.

That leads to my concern that the decision as to whether or not rental housing stock will be lost can be irrelevant to the representations made before the committee. There is nothing to tie the committee to that concern, and therefore we will have the applicant faced with meeting all of the objections that the public can bring to his building, all the objections his tenants may bring.

You may have a decision of the committee adverse to the application, not on the basis of the rental housing stock or anything to do with that, and that will lead to an appeal.

It is my submission that the delay occasioned by the procedures required to institute the system within the Planning Act are negative and not contributory. If the man has a right under zoning and official plans he ought to be permitted to go on with those rights.

Secondly, Mr. Chairman, the Planning Act as it is now drafted gives a person applying for a building permit certain protections. There has to be a property standards and maintenance bylaw in force. There has to be a demolition control area designated.

He has a right to the issuance of a demolition control permit where he has a building permit. He has a right to appeal and he has a right to appeal whether there is a refusal, if there are conditions imposed or otherwise.

This bill does not permit a number of those rights. It takes away the standards of maintenance and occupancy requirement. It takes away the designation of the area requirement. The whole city would be designated. It does not give him, or the city, an ability to impose conditions as a result of the issuance of a demolition control permit which the Planning Act provides, an appeal right from that.

This is a unilateral yes or no, and it is my submission in most circumstances that because of the time periods the city will not be able to formulate an opinion and the time period will expire and the permit will be deemed to be refused.

The applicant is forced to an appeal for doing nothing, for wanting to exercise the land-use control rights that he has. That is an inequity that, in my submission, is improper.

On that aspect, this bill if enacted is a statutory divesting of appeal rights that the Planning Act now provides. I have not heard the city of Toronto's case put to you as to why there is a need for this bill, but it is my submission that if a bill is supportable in some form, it is not one that should statutorily divest the rights that the Planning Act now provides.

I will conclude by just reiterating one or two points.

As I see it, the benefits of the bill to the city are twofold. It expands a control over the issuance of demolition permits to all types of residential dwellings in excess of six units and there is no other restriction. That gives an unfettered control over all residential buildings, all the ones included in the list I put on

page 1 of the brief and all the ones specifically excluded from the Residential Tenancies Act.

The second benefit I would think the city could look to in this bill, if enacted, would be that it gives them an additional planning control over properties not built to greater than 50 per cent of their capacity, 50 per cent of their potential. If the property is not built to that extent a demolition control permit can be refused.

The disadvantages, on the other side of the ledger, are as I have itemized: a significant fetter on the sale of qualifying dwellings that have development potential, and that this benefit can be measured in the time, delay and cost, and the onus of appeal routes if they have to be pursued.

The second disadvantage is that it undermines the planning process by putting a restriction on development rights that are otherwise supposed to be known and approved by provincial mechanisms.

Third is Mr. Rotenberg's point that it distorts the market forces in the municipality, away from what the city is directly trying to accomplish. If the city is attempting to accomplish the provision of rental dwelling units, a land owner who wants to provide them can be frustrated from doing so by a refused demolition permit, not on the basis of what he wants to do, but on the basis of political expediency. The neighbours may not like the premises, or the owner, or the person; or it can be refused on the basis the tenants themselves are vociferous enough that they can influence the committee that makes the recommendation to council.

On that basis, it is our submission that the disadvantages outweigh the benefits.

Mr. Rotenberg: To start with, our lawyers have this problem of hearings and so on. It is clear in law that if the city council holds a hearing and the hearing comes under the Statutory Powers Procedure Act, the bill does not provide for a hearing. I know the city of Toronto always voluntarily holds a hearing, but there is nothing in the bill which says there must be a hearing, and there is some doubt in law as to whether, in this act, the council must hold a hearing. The council can simply issue or refuse to issue the permit without holding a hearing.

If there is some doubt about this in the committee's mind, I want to make sure they know it comes under the Statutory Powers Procedure Act. The proper way to handle it, I think would be, somewhere in subsection 2, to state the city council must hold a hearing. If you get that kind of wording in somewhere, then it is clear a hearing must be held. The applicant has a right to a hearing and it is therefore clear it is under the Statutory Powers Procedures Act.

When you get to the clause-by-clause discussion, Mr. Chairman, if the committee wishes to cover that possible loophole, to provide for a hearing would be the way to do it. Mr. Fram is nodding his head to indicate he would have no objection to that.

Mr. Chairman: Messrs. MacQuarrie and Philip indicated they wished to speak. Perhaps that was on a subject that is now dealt with.

Mr. Philip: I should like to ask questions on the presentation.

Mr. Chairman: Mr. MacQuarrie, do you have questions?

Mr. MacQuarrie: Yes, Mr. Chairman.

Mr. Lord, if I followed you correctly, one of the main thrusts of your submission was that the--

Mr. Chairman: There is a little bit of confusion in the room, and also we are having trouble--

Mr. Philip: --two bus loads--

Mr. Chairman: Mr. Philip, I do have the floor at the moment. I apologize. I cannot hear you, and I am sure that perhaps the other members cannot hear you for some reason. Could you speak up perhaps, and disregard the confusion?

What was your point, Mr. Mitchell?

Mr. Mitchell: It was just that it appears, Mr. Chairman, that you are going to have to use the overflow space. I do not know whether the people are aware that space is available.

Mr. Chairman: Yes, I believe there is someone outside directing them to the next room.

Mr. MacQuarrie: As I understood the main thrust of the initial part of your submission, Mr. Lord, it was that this bill, if passed in its present form, would create an unknown quantity in so far as the ownership and marketability of property was concerned.

Am I correct in that? The owner would be in rather a limbo.

Mr. Lord: That is correct, sir. That is one of the main concerns of the board--not on the language of the act, on the import of the act as a draft bill.

Mr. MacQuarrie: You also submit, I understand, there should be some control or fetter over the jurisdiction the municipal council is given under this bill?

Mr. Lord: Yes, sir. It was my submission that the decision of whether or not a demolition permit should be refused should be confined to the issue of whether or not the building under discussion detracts significantly from the strata of rental housing units in the city.

4:30 p.m.

Mr. MacQuarrie: Subsection 1(2) of the bill sets out two exceptions under which a building would be exempt from this

requirement. Clause (a) deals with what is defined as "unsafe," and clause (b) is concerned with a building which is built to a lower density than that permitted by the existing zoning bylaw or official plan.

Can you think of any other exceptions that should go in this bill?

Mr. Lord: I did not address the clause-by-clause consideration. The brief does that. I am concerned with the first exemption of unsafe buildings.

The obverse of that is, if that is one of the only escape hatches from a demolition refusal or from a hearing and an appeal to council then a landlord may very well be encouraged, in a sense, to let that building deteriorate. That is a negative effect from a piece of legislation that is attempting to promote a public objective. In my submission, that is just the wrong approach to take to legislation.

The second entry, 50 per cent of its development potential, is the one that gave me the concern about which I spoke quite extensively. If the planning process in Ontario is working, then the land use controls applicable to a piece of property are what the public says is appropriate. A person should be entitled as of right to build what the public says is appropriate. If they are going to interfere at all, they should be entitled to build to what the public has said is an appropriate use.

This bill cuts that use in half. It says to a person who has a 50 per cent potential, "You can't use it, because we are going to refuse you a demolition permit, maybe on some basis related to rent control, but maybe not; we'll see."

In my submission that is another negative approach to exemptions from the act. I should much sooner redraft that entire section than suggest other clauses that should be added.

Mr. MacQuarrie: I had raised the question yesterday with the municipality as to whether there should be some other exemptions in there rather than just summary action from the board.

Mr. Lord: I think the list of exemptions to which the act should not apply, which I provided you under the Residential Tenancies Act, should certainly be added as a narrowing of the impact of this bill.

Mr. MacQuarrie: Plus the other types of structures you referred to, as well: the apartment hotels and nursing homes, university residences and the like.

I will not get into the Statutory Powers Procedure Act at this time.

Mr. Chairman: Mr. Philip, before you commence, may I have the direction of the committee? As you can see, there are people standing in the room. I do not know how many others there are in the hall. Committee room 2, next door, has been wired for sound, in

contemplation of a number of people coming today and overflowing this room. Does the committee wish that the seven seats behind the members be used? Or do you wish the overflow to go into room 2?

Mr. Mitchell: I certainly have no objections to the people coming up to use the chairs if they are available in the committee. I know people would prefer to be in here where they see different individuals speaking, so I have no objections to that. I am pleased that you are drawing people's attention to the fact that, once these chairs are used up, the only space left is in the adjacent committee room. Speaking for our party, we have no objections to the seats being filled here.

Mr. Chairman: Thank you. Would you people please take the three seats over here to the south and four over on the north, and after that, would there be no people standing? Would you please go into committee room 2 next door which is wired for sound by Hansard?

Mr. Lord, I do apologize to you. It is not quite like a courtroom. I am sure you know that from the past. You are certainly finding that out now, and I do apologize for the interruptions and the noise in your presentation.

I would also ask the press to be as unobtrusive as possible. I do not believe they have approached either the chair or the clerk regarding their movements, so I would ask them to be as unobtrusive as possible.

Mr. Philip, I believe you wish to address some questions to Mr. Lord.

Mr. Philip: Yes, Mr. Lord, I have a number of questions I want to address to you.

You seem to be concerned that this particular act is somehow frustrating the Planning Act. Has it ever occurred to you that if the Planning Act were adequately working for the council of the city of Toronto and the people who have just flooded into this room, perhaps this act would not be needed?

It is because the Planning Act is not working that these people stand the chance of being thrown out of the homes some of them have lived in for 15, 20 or 30 years.

Mr. Lord: Mr. Chairman, the bill in its form of our representations here today does not relate to the provision of rental housing. It permits a discretion to refuse demolition permits for any type of residential dwelling unit, whether it is rented or not.

We make the point in our brief that if the city of Toronto, by additional discretionary control, deflects the investment of capital into residential accommodation of any form--condominium, rental or otherwise--the loser is ultimately the tenant, because the rental housing stock will not be renewed or expanded.

Mr. Philip: What evidence do you have, Mr. Lord, that

without this act the rental accommodation has expanded in the last five years in the city of Toronto?

Mr. Lord: Sir, I did not come with those statistics.

Mr. Philip: Well, if it has not been improved without the act, how can it possibly get any worse with this new act?

Mr. Lord: This act, sir, imposes an additional hurdle for prospective investors, purchasers or vendors, from investing in the community. It is a hurdle that does not exist now.

Mr. Philip: I am not a mathematician, but it seems to me that zero multiplied by zero gives you zero.

I wonder if you can tell me: you say that there are exemptions in the Residential Tenancies Act. I am sure that you are familiar with that act and I am sure that your association had representations in 1975 and 1977 when that act was being debated and the new act written. Therefore, are you not familiar with the fact that the exemptions in the Residential Tenancies Act relate very specifically to the fact that certain types of rental accommodation are under geared-to-income formula and therefore could not be covered by rent review, and that in fact, when we are dealing with this act, there are no such necessities? Why do you bring in this red herring, as I said?

Mr. Lord: The Residential Tenancies Act may very well recognize and exempt the type of accommodation that you refer to, but it also exempts other types if you look in subsection 134(1).

To your earlier question as to whether or not the zoning and official plan process was working, I am sure you have heard more competent representations than I have on that issue, but to accomplish a regeneration, or an expansion of the rental housing stock in the city ought not be approached from a negative, prohibitive standpoint. That does nothing constructive to encourage the expansion of accommodation.

4:40 p.m.

If the city were anxious to increase rental housing stock, I am sure there are a variety of other programs or upzonings that might make the provision of additional dwelling units more attractive.

I am not necessarily suggesting the extension with public funds, but certainly support the marketplace in its desire to add to the stock. In any event, it is not a problem the city of Toronto can solve. It is a province-wide problem--nation-wide.

Mr. Philip: I agree with you that it is a province-wide problem. The present problem of demolition is a Metro-wide problem, as we demonstrated yesterday with some of the information that I brought in from some of the boroughs.

You and I are in one agreement, namely that this bill should not apply just to the city of Toronto, and that is why our party

moved an amendment to the Planning Act that would give this power to all municipalities, not just the city of Toronto. Maybe we are in agreement and disagreement at the same time on that.

Regarding your objection to including such items that are not in the Residential Tenancies Act--and you label some of these things--why do you feel that we should exempt the demolition of boarding houses, lodging houses, university residences, and co-operatives, if the main objective of the city's purpose in its housing policy is to do two things?

One is to increase construction of rental accommodations--and as you said, there are other methods of doing it. You and I might disagree on the other methods, or you might disagree with the city of Toronto on its other methods, but at least that is one side of it. The other side is to stop the depletion of the existing housing stock.

If their objective in this bill--as they clearly stated in their introduction yesterday--is to decrease the depletion of rental accommodation stock, why should they not decrease the depletion of apartment hotels, boarding and lodging houses, university residences and co-operatives, rest homes, homes for the aged and nursing homes every bit as much as private rental accommodation?

Mr. Lord: Well, as I understood the rationale for the support of the bill, it dealt with rent control and the effect that the ceilings on rent control have on rental accommodation.

The strict language of the bill extends the demolition power from that narrow application to every type of residential accommodation of six or more dwelling units, except for those that are unsafe and otherwise exempt.

It was our review that suggested that this scope did not fall in sync with the objects of what we understood to be the intent of the legislation.

Mr. Philip: You are perfectly right. I think that it is a fault in the bill and I would certainly want to move to remove the sunset clause that would do away with this bill after rent review were removed, so I guess you and I are in agreement with that as well.

Mr. Lord: In part.

Mr. Stevenson: I am sorry I missed part of your presentation. I may be going back over something you touched on earlier.

I am a farmer and a land owner, and I certainly appreciate some of the points you are making. Various controls are coming on us, too, which I do not appreciate.

However, we do have a situation in this city which is occurring, and if allowed to go far enough, could certainly create some problems.

I spent a while in the United States and witnessed a situation where there was destruction of the moderate-priced apartment-type dwellings, and the establishment of some very high-priced apartments: basically high-priced and slums. So there was really no middle-class or moderate-class housing left in the central part of that particular city.

Does that not create some concern to you? Do you not feel that the apartment owners have some responsibility to maintain that type of housing and maintain the balance that still exists in Toronto?

Mr. Lord: I do not know about the maintenance of the balance here, but I think the planning controls allowing densities and unit size variations can permit a range of rental accommodations that can, if it is monitored, keep a balance into the future. It is a process of using a carrot as opposed to a stick.

I do not disagree with you that the city of Toronto should offer accommodation for every type of income range. I do not disagree with that at all. I would think that we would have to need some pretty definitive statistics to suggest that there is not a vast body of accommodation within the confines of the city of Toronto in every range now.

Sure, there may be redevelopment of a number of units from one range or category to maybe condominiums, which are currently in vogue. Stacked townhouses were in vogue two or three years ago. Nobody will build them now.

I do not think we should use the Legislature to remedy a temporary phenomenon.

Mr. Stevenson: Are you saying the observations that the city has made as far as you are concerned are not real or just very temporary?

Mr. Lord: I am not prepared to suggest whether they are real or not. I was not even present when they were made. I am suggesting that the condominium phase has, in my submission, peaked in the city of Toronto. There may be people who do not agree. It is certainly a very definable craze.

I am not equipped with the statistics to say a number of condominium units built have been built on locations that were formerly offered to a range of rental accommodation. It is significant in the total stock of rental accommodation in the city. You have better people equipped to give you that advice.

Mr. McLean: Mr. Lord, I have one question for you. It is concerned with the six or more dwelling units in the bill. What comments have you got on that? Do you think that it could be 10, 20 or 30 units?

I questioned the representation from Toronto in committee yesterday and it seemed to be a figure that was picked out of the air. I wonder if you have any comments of whether it should be 20, 30, 40 or 50?

Mr. Lord: I really do not have any instructions on it. Certainly the larger the number, the less the effect of the bill on one of the aspects I gave a concern about, and that is the range of investment that would be free to function freely.

If the application of the bill is on a greater number of units, 40-plus, every residential dwelling accommodation with a lesser number would be free to be bought and sold in the marketplace and developed in accordance with the planning controls in place.

I have no basis for the six.

Mr. Philip: On a point of order, I think there was an explanation given yesterday.

Alderman Sheppard said that in some of the downtown wards, such as his own, the majority of the rental accommodation was in fact comprised of sixplexes or upwards. That was why the figure six was chosen.

Mr. Chairman: Mr. Philips, that is not a point of order. This is a different witness in front of us, and it is quite a proper question--

Mr. Philip: On a point of order, Mr. Chairman, the statement was--

Mr. Chairman: Mr. Philip, I am still in the middle of speaking.

Mr. McLean has a right to ask a different witness the same question, because he may evoke a different answer from a different witness.

Mr. Philip: Mr. Chairman, if you were listening you would have seen that Mr. McLean did not ask the question, he also made a statement, and the statement was that the city of Toronto and the witnesses yesterday did not have any explanation for the figure of six units.

4:50 p.m.

What I am doing is correcting the record which you, if you had been listening to the debate yesterday and today, would have done as the chairman. Misinformation was presented. I am just asking you to correct the record and that is what I have done.

Mr. Chairman: No, I will not correct the record. I will let it go as it is.

Mr. Philip: You, in your usual incompetence have not, but at least I have corrected the record.

Mr. Chairman: Gentlemen, that is enough. Mr. Philip's intentions are terribly obvious to all of us. I will leave that alone.

Shall we adjourn to the House for whatever reason the bells are ringing, and adjourn back here as soon as we can.

Mr. Brandt: In the light of the number of people who are here, I wonder if you might use the prerogative of your chair and explain what is going on in the House.

Mr. Chairman: There will either be a quorum call or a vote, one or the other, and we are required there perhaps within five minutes.

Mr. Swart: On a point of order, it can only be a quorum call. The votes are set up at 5:45 p.m. Let us find out if it is a quorum call and stay here. There are an awful lot of people here. Let us not leave this hanging.

Mr. Chairman: Mr. Swart, we did have difficulty with the House closing down last Thursday night, one week ago today, because the members of a committee sat in their chairs and did not go up on a quorum call.

Mr. Swart: We can find out what it is.

Mr. Chairman: The chair is prepared to rule that we adjourn to the House. Is my ruling challenged? No.

We are adjourned until the bells stop, until the matters are sorted out in the House. Gentlemen, I am advised that it is not a quorum call.

The committee recessed at 4:54 p.m.

5:18 p.m.

Mr. Chairman: I see a quorum back in the room. Ladies and gentlemen, will you please keep quiet?

Gentlemen, while you were in the House, Mr. Grossman and I were here. I gave two undertakings to the group because we did not know whether we would be see them again this afternoon or not. Number one, we arranged that when they come back on June 16, these people who have not been heard this afternoon will come on first. The clerk will then reschedule those now scheduled for the 16th to some future indefinite time, depending upon on how long the House sits.

Second, this room will be smoking when they come back and the room next door, committee room 2, will be nonsmoking.

I will again reiterate for those people that were not here earlier in the afternoon when we mentioned it, we must adjourn this meeting at 5:40 p.m. for private members' hour voting. This is the same every Thursday and so I am sorry we must adjourn at that point.

Mr. Spensieri: On a point of order, in the light of the fact a great number of people have come to address the committee today, might it not be appropriate after the vote to allow the time that has been lost upstairs by this little procedural debacle to be

added on to today's time? We could sit beyond the six o'clock time and perhaps hear more of the deputations today. I am sure some of the people who attended today will not be able to attend.

Mr. Mitchell: Mr. Chairman, I cannot speak for the other members. Unfortunately our timetable for sitting is laid down by the House leaders in discussion and those timetables are tabled, so I do not know what the rules are that would allow us to go beyond six.

I do not wish to oppose any motion to extend the time if that is the committee's wish, except I must indicate some of us have made other commitments. I would hope we do not really short shift the people here by so many of us having to be away.

So I am looking for two clarifications, one, whether the rules allow us, and secondly, to offer my apologies in advance if that is what the committee decides to do.

Mr. Chairman: Mr. Mitchell and Mr. Spensieri, it is my understanding that we must break at 5:40 p.m. We do not have the capacity to sit after six except with unanimous consent of the committee. We could arrange our own order, correct?

Alderman Johnston: Mr. Chairman, in order to avoid going on talking about what you are going to do, I am quite prepared to give up my spot to speak so you can hear from the tenants today. Then maybe you would hear me tomorrow morning. I am perfectly willing to interrupt my schedule.

Mr. Chairman: Madam Alderman, so far as tomorrow morning is concerned, I do not think we should, because we have other people scheduled. It is very late in the day to tell the Urban Development Institute and Alderman Kanter, already scheduled, that they cannot come tomorrow.

I would say you would have to come back on June 16 and we will reschedule you for that date. I do not think we could impose on those people tomorrow. It is not their fault this went on in the House.

Is there any agreement, for example, for coming back at six or immediately after and sitting until, say, 6:30 or something along those lines? Are we going to have unanimous consent or otherwise? Members may have appointments or various matters after six.

Mr. MacQuarrie: I would move that we reconvene as shortly after the vote as possible and sit no later than 6:30 because some of us, myself included, have time commitments and I trust that would accommodate them.

Mr. Chairman: Ladies and gentlemen, do realize we have to be back here at eight o'clock and the House sits until 10:30. It is not as if we were going off to goof around for the rest of the evening. There is business that has to be done tonight. The members do have things to do between now and eight o'clock.

Mr. Philip moves that Kay Gardner be now heard.

I would point out to the members that we have Mr. Lord still in front of us.

Motion agreed to.

Mr. Chairman: Thank you, Mr. Lord, for your patience and perseverance. Mr. Smith, thank you very much for your presentation today.

Mr. MacQuarrie: Mr. Chairman, let the record show the vote was unanimous.

Mr. Chairman: Thank you, Mr. MacQuarrie.

Mr. Swart: Mr. Chairman, on a point of order, even though the vote was unanimous I detected some people who did not vote. You did not call for the opposition vote.

Mr. Chairman: There were some hands coming up slowly after, Mr. Swart.

Mr. Swart: You did not call for the opposition, but let us not pursue it. Let us get the people on.

Mr. Brandt: Call the vote again and we will clear it up. It takes three seconds to hold a vote and then you have the record if you want it.

Mr. Chairman: Then we can certainly take it now. All those opposed to the motion, please put up your hands.

There being none, and everyone having voted, it was unanimous. There was none opposed.

Mrs. Gardner and Mr. Fink, please.

[Applause]

Ladies and gentlemen, we are using quite a bit of latitude today. You are not allowed to applaud or really show any emotion of any kind. I would ask for your co-operation. If that were in the House, that would only happen once and you would be excluded from the House.

Mr. Swart: They can smile though, Mr. Chairman.

Mr. Chairman: Smile, Mr. Swart, yes.

Who is the spokesman for your group?

Mrs. Gardner: I am, Mrs. Kay Gardner.

Three apartment buildings on Eglinton Avenue West--790, 800 and 840--have become a symbol of the fight to preserve affordable rental housing in the city of Toronto. For almost two years the tenants of these three buildings have struggled to save their homes from demolition. They are determined to win but to do so they must

have your support. In peril are 135 apartments, the homes of more than 200 people.

These are fine old buildings; 790 is a brilliant example of Art Deco design and an ornament to the neighbourhood. The buildings are surrounded by landscaped gardens of a size seldom found in an urban setting. No other buildings in our neighbourhood have such pleasant surroundings. Yet these buildings are to be destroyed unless the Legislature gives the city of Toronto the power to save them. They are going to be destroyed to be replaced by one building containing 98 luxury condominiums that only the wealthy could afford.

Mayor Art Eggleton, for whose staunch support we are grateful, has said, "It would be tragic if we lost these buildings under the conditions of today's rental market."

We say it would be very tragic, and immoral. How can we justify the destruction of even one existing apartment unit, let alone 135, in a city where the vacancy rate hovers close to zero?

A fourth building in our neighbourhood--at 2525 Bathurst Street--is also in jeopardy, and there we face the possible loss of another 33 rental units. In all, 168 moderately-priced apartments face destruction: sufficient housing for more than 300 people. Which government is prepared to replace this lost housing?

What we are really talking about is not the destruction of mere buildings, of real estate, but the destruction of a small, stable community and the cruel disruption of the lives of people who have deep roots in our neighbourhood, people who have lived in these buildings for 10, 20 and 30 years.

A survey conducted this year by the city of Toronto showed that 50 per cent of the tenants in the Bathurst Street-Eglinton Avenue area are seniors--and you can see them here this afternoon--compared to only 10 per cent for the whole of Metro.

I know the people behind that statistic. I have lived in the neighbourhood for 21 years and for seven of these I have worked as a volunteer tenant organizer. Many of these elderly tenants have become my friends. I have seen the havoc wrought and the tension and the uncertainty under which they have been forced to live ever since the death sentence was imposed on their homes two years ago.

One of them is 80 years old. She is not here today because she has had a heart attack. Nor is another, a widow of 88, who has lived at 790 Eglinton Avenue West for almost 33 years, or since the building was first opened. She is far too old to move. She told me: "I wake up at night and I think: 'How could I go to another place? How could I get through the upheaval of moving?'"

Eva Gebirtig, who is not here today, and her sister Isabel, who is here, have lived at 800 Eglinton Avenue West for 24 years. They did not want to reveal their ages, but I can assure you that they are elderly.

Even the elderly do not want to reveal their age. I always think if you get to be 80 you should be proud to talk about it, but

they do not feel that way. When we met with our MPP, Mr. Roy McMurtry, last November, Eva told him, "I am too old to move."

The other day she told me: "I have said that I will die here and now it looks as though I will. I did die, really. They had to punch me back to life." Eva had a heart attack last winter but she is up and around now, thank goodness.

Gertrude Clavir, who is here, is 73, and her friend, Cammie Skinner, who is also here, is 71. They share an apartment at 840 Eglinton Avenue West; they have been there for 12 years. Gertrude told me, "I think it is almost impossible for us to find another apartment or another place to live at a price that we can afford."

Their search for a new home is complicated by the fact that Cammie has a heart condition and must live on a bus line. Where they live now, there is a bus stop at their door. In their working days, Gertrude was a public health nurse and Cammie was a milliner. Both have contributed much to our society and to destroy their homes now seems a shoddy way to treat them in their retirement.

Irene Booth is 74 years old. She is here and she lives at 2525 Bathurst Street. Her annual income is \$5,600. She tells me that in some months she only has \$4 or \$5 left after she pays her rent and utilities. Where will she go if her home is torn down? Not, I can tell you, into one of those luxury condominiums which is going to replace it.

These women, and the many other elderly men and women who are here today who live in these buildings, are proud and independent people, still active in mind if physically ailing. They do not want to be banished to homes for the aged.

One spunky woman spoke for all of them when she told me, "I am not ready to be shipped off to some old people's home and stored there away from my family and friends."

These buildings stand at the heart of a predominantly Jewish neighbourhood and these tenants belong here. Their synagogues and their many community organizations are here. So are their friends of a lifetime and, in many cases, their grown-up families who live in nearby houses.

If you destroy these buildings, you destroy the character of our neighbourhood. For all along Eglinton Avenue, and up and down Bathurst Street, are buildings just like these that would fall to the wrecker's hammer.

5:30 p.m.

There are virtually no vacancies in our neighbourhood apartments. Last September the city of Toronto surveyed 1,480 units and at that time found only one vacancy. That was a rate of 0.07 per cent.

We have the support of almost all our neighbours. Last fall, tenants from 76 nearby apartment buildings, close to 700 people, expressed their support at the largest meeting held in Forest Hill

in the past 20 years. We have the support of Mayor Eggleton and of Toronto city council which, as you know, voted 16 to five last October in favour of demolition controls. We would be grateful for your support now.

Apartments are homes too. If these apartments are lost, everyone loses--everyone but a handful of speculators who will stand to make millions I thank you.

[Applause]

Mr. Chairman: Thank you, Mrs. Gardner. Mr. Fink, are you making a presentation?

Mr. Fink: Yes, I am. I am a solicitor. I have represented 12 buildings in the Eglinton-Bathurst area as well as many other buildings in Metropolitan Toronto.

Of the buildings that I did and do represent in the Eglinton-Bathurst area, four of them are under threat of demolition or are actually being demolished at this time. One of them was 118 Eglinton Avenue West.

In that case, we attempted to argue in court that the housing crisis presently going on in the city of Toronto should be one of the considerations the judge should make in determining whether to evict the tenants. If I could quote briefly from a Toronto Star article following that particular case:

"Ward 11 Alderman Anne Johnston, armed with facts and appalling figures, came after a tenant's lawyer asked her to testify on the housing emergency in the city of Toronto. But the presiding judge stopped her in mid-sentence, ruling that any housing crisis wasn't relative to the case at hand, a landlord's eviction trial against nine tenants."

The judge told me I should get on the subway and go one stop north if I wanted to talk about the housing crisis. I got on the subway and I am here tonight.

What I would like to do is to talk, as Kay has to some extent, about the human consequences of demolition. I am going to use the example that I am most familiar with, which is not what happens to people when their buildings are demolished, because I really do not have enough information on that. But I can tell you what happens to people who are forced out of their homes by condominium conversion.

Number 740 Eglinton Avenue West was turned into a type of condominium. The building at 325 Lonsdale Road was turned into a type of condominium. I should like to say what happens to the tenants there.

First of all, some of the senior tenants are unable to find seniors' housing that they can afford in their existing area, and they are forced to go to some of the seniors' housing in some of boroughs, such as Scarborough.

It is quite traumatic for them. They have to rediscover, when

very elderly, an entirely new neighbourhood, after they have lived in their previous neighbourhood for over 20 years.

As Kay mentioned, there is a great deal of emotional distress, with which I am sure you can empathize, for people who do not know whether their apartment is going to be available to them during the period of uncertainty.

There is financial impoverishment and there is impoverishment in terms of accommodation. I know that some tenants have had to double up when they were evicted from their apartment. The problem is that they are not doubling up into a two-bedroom unit; they are going into one-bedroom units, so that two elderly people have to live in a one-bedroom unit in order to afford the accommodation.

Many tenants in the buildings I represented, where there has been this conversion and they have been forced to leave, have gone into nursing homes straight from their apartments. They would not necessarily have had to go to nursing homes, but they were simply unable to cope with a new environment.

If you can picture yourself as an elderly person, and you have gone to the same shops all your life, you have friends in your building, you have people around you who can aid you in day-to-day activity, and then you are forced to leave, you cannot set up all of that again. There is no alternative accommodation across the street. People are put into nursing homes. One tenant once described to me being sent to a nursing home as being an earlier sentence than he would otherwise would have had.

I have known tenants die during the move. These tenants are elderly, over 80, and may have died in any event, but I have seen them die when they were sweeping out in front of their door because the landlord was making renovations during the preparation for a condominium. They were so worried that the apartment was dirty that one tenant died sweeping the outside. I have seen them die during the move, on transit in the move. One tenant died while being taken to live with his son. I have been made aware of many other similar deaths.

We are not just talking here about people undergoing hardship. We are talking about people's lives ending when they are forced to move. I can give you several examples, as I have done.

In social terms, we are talking about loss of affordable housing, and I think that is quite apparent. The tenants at 790, 800 and 840 are paying rents for the most part below the \$300 level. The landlord is asking for rent increases. He may well get 10 or 15 per cent and that will still bring the rents to a moderate level. These are the types of rental housing that we are losing.

Let me deal very quickly with some of the arguments made by landlords at rent review hearings. Am I running out of time?

Mr. Chairman: Yes. Mr. Fink, excuse me. It is 5:40 p.m. Mr. Philip, I know, has indicated he wishes to ask questions. I know you are not through with your presentation. As I said before, we have to break for private members' voting. We will come back at 6

p.m. I believe. We should break now and we will see you immediately after 6 p.m.

Interjections.

Mr. Chairman: We have gone to 5:45 p.m. and missed votes on a couple of occasions.

Mr. Elston: In speaking with Mr. Fink, I think he indicated that another five minutes would be needed. We generally do not start until 5:50 p.m.. If we had five minutes more--

Alderman Johnston: Mr. Chairman, would you be prepared to hear me at 6 p.m.?

Mr. Chairman: I am sorry, we are not through with Mr. Fink yet. We will go on for another five minutes.

Mr. Mitchell: I quite respect the concern about getting comments in about this particular legislation and I am sure the people understand and appreciate our difficulties. I am quite prepared to recommend that we sit as long as it is humanly possible, so long as they understand that when votes are called we must unfortunately be there.

I look to the chairman for guidance. If you feel that five minutes is suitable, rather than take a great deal of time, let Mr. Fink proceed.

Mr. Chairman: Unless I am challenged and overruled, I will rule we adjourn now to reconvene immediately after 6 p.m. It is not fair to the motions before the House that we miss votes.

The committee recessed at 5:42 p.m.

6:17 p.m.

Mr. Chairman: There is a quorum in place. Mr. Mitchell, do you have something to say?

Mr. Mitchell: Mr. Chairman, yes. I feel the committee should let the people in attendance know the votes went on beyond six o'clock. We apologize that we were not able to get here. It should also be clearly pointed out we did agree to go to 6:30 p.m.

Unfortunately there is, in my opinion, no way we can extend beyond that because of commitments of the members of the Legislature. I apologize for that. Let me assure you it is not that we do not wish to hear you. We have made every effort to try and do just that this afternoon, and it is one of those unfortunate things that we are--

Mr. Philip: What is wrong with sitting until seven, Mr. Chairman?

Mr. Chairman: Well, Mr. Philip, for one thing there is a Solicitor General display, information thing, that many of us have had in our calendar for some weeks. I believe Mr. Spensieri, Mr.

McLean and myself, at least that number and possibly Mr. Elston, have had that scheduled for weeks.

Mr. Spensieri: Only as official critic to the Solicitor General.

Mr. Chairman: So I believe we must stop at 6:30 p.m. unless there are several people--it is not unanimous to go beyond 6:30 p.m. So that is when it will be and we will adjourn at 6:30 p.m. You people can carry on on June 16. We will lead off on the 16th, followed by Mrs. Johnston.

Mr. Fink: My submission was not originally divided up into parts but it is now. The second part was to talk about some of the arguments that landlords have presented to myself. I have not had the opportunity of hearing the landlords testify to this committee, but I do hear from landlords because I do quite a bit of rent review. The landlords do on occasion dare to talk to the tenant's representative in person.

They have brought to me the following points, which I am sure you have probably heard, on why they are against demolition control. The most common one I hear is that, "If you do not allow us to redevelop our buildings, we will just abandon them and let them turn into slums." It is the exact same argument I heard many times before the introduction of rent control itself.

Indeed, during rent control, landlords did allow their buildings to deteriorate by cutting back staff and not making capital repairs as often as they would otherwise. Recently under rent controls, what has happened is that landlords have begun major capital projects on their buildings, because rent control rewards them with large rent increases if they so do. Not only do they get their cost of the repairs, but they also get interest on their repairs at a very high rate.

My feeling is that this argument that the buildings will deteriorate into slums simply will not happen, because there is profit in operating apartment buildings as it presently exists.

The next argument I often hear is that, if the landlord will lose his right to redevelop his property, which is sort of an innate right he has; he will lose his right to achieve the value of his capital investment. However, I think one has to look at who is actually demolishing the buildings and trying to earn his right on the capital investment.

One fellow who is doing this, is a fellow called Mr. Axelrod. It is a rare opportunity for me to describe what I really think of Mr. Axelrod because I need not fear a slander case. I am going to quote what Mr. Justice Labrosse of the Supreme Court of Ontario called Mr. Axelrod, "a seasoned land speculator." This is what Mr. Axelrod is. He owns properties all over the Eglinton-Bathurst area.

In the court case where Mr. Axelrod was trying to force the city of Toronto to give him a building permit, it came out he owned all kinds of properties. He bought the properties on speculation. He bought the properties with the view of turning them into

condominiums and making, conservatively, a \$2-million or \$3-million profit on his purchases.

It is not your small landlord or your small private enterpriser who is buying buildings and trying to demolish them to turn them into condominiums. The people who are doing this are seasoned land speculators. If there were demolition controls, we would not be refusing the little landlords down the street, we would be refusing people in the business of turning over properties and making profits on that basis.

Another argument I hear from landlords--they are quite frank about this--if they do not achieve demolition of their apartments, they will gain their ends by other means. Specifically, I see a lot of tenants being evicted because dishwashers are being put in.

I have in my pocket a case coming up tomorrow in court. I will not mention the buildings so as not to prejudice the case. The reason for throwing tenants out is "one wash basin, one dishwasher, two complete sinks and a water closet." That is the reason why 60, 70 and 80-year old tenants have to leave their premises. It is in Ms. Fish's riding that this is happening.

I do not know what the judge will do with this case, but here is a landlord who figures he will get all the elderly people out and he will jack up the rents. I can say he has already done that. Some of the elderly people left under pressure and he has jacked up the rents.

Any legislation to prevent demolition control, and I think the legislation presented by Ms. Fish as a private member's bill is good, is good legislation. With any legislation of that kind, I can say, as a lawyer, you are going to have to beef up some of the subsidiary legislation to prevent condominium conversion and beef up the legislation and Landlord and Tenant Act to make certain judges hear from the Legislature, in no uncertain terms, that this type of conversion and forcing tenants out is not to be condoned.

Finally, I am now witnessing a growing awareness among the tenants themselves in their apartment buildings. You can see there is quite a bit of interest here today. It used to be that I would come into a building, represent them and the tenants would all move out if they lost the case. They would find alternative accommodation. Today, I find that even when rents go up 25 and 30 per cent the tenants are forced to stay because there is no alternative accommodation.

Tenants' associations are formed in these buildings and they are lasting associations. In the past, the associations would wither and die once the immediate crisis was over. The tenants' associations are now continuing because once a landlord applies to rent review for one 30 per cent rent increase, he is never satisfied. He continues.

The same thing happened at 790, 800 and 840 Eglinton Avenue West. The tenants' association there to prevent the demolition of the apartment is continuing. I feel these associations are going to have to get together and they are going to be coming to the

Legislature en masse to protect their homes. Now is the time for the government and for this committee to take steps to prevent this great degree of frustration that will vent itself on the government in the future.

Mr. Chairman: Mr. Philip, do you wish to question?

Mr. Philip: I understood Alderman Johnston wanted to address the committee.

Mr. Chairman: Do you want to address it today?

Alderman Johnston: I cannot talk about seven years' hard work in two minutes, Mr. Chairman.

Mr. Chairman: Correct. You did speak yesterday, as well, and you are scheduled for June 16.

Alderman Johnston: Yes, I am content that I can come back on June 16 and I will try to have my remarks in writing for you so they can be entered into the record.

Mr. Chairman: Thank you. Are there any members who wish to address Mrs. Gardner or Mr. Fink on June 16?

Mr. Philip: We do have five minutes now, do we not, until--

Mr. Chairman: A minute and a half.

My question is, do Mrs. Gardner and Mr. Fink come back on June 16? What is the wish of the committee? If there are no questions to ask?

Interjection: Agreed.

Mr. Chairman: Yes. Could you please come back and lead off on June 16?

Alderman Johnston: I do not think Mrs. Gardner will be allowed to come back on June 16. She works and she finds it very hard to get here. Fortunately, this week she is on jury duty.

Mr. Chairman: I am sorry. June 16 is the next time we can meet and I do not know when we can meet thereafter. I am sorry, it is June 16 at 10 a.m. It is a Wednesday. We will have time available for Mr. Fink and Mrs. Gardner, followed by Alderman Johnston on that morning.

Mr. Mitchell: I would personally like to thank the people who attended the committee today. They presented themselves very well. I know it is hard not to applaud someone who is their spokesperson and who speaks very well for them. In fact, it would be my pleasure to see them back at the committee again.

Mr. Philip: May I just ask one question of Mrs. Gardner?

Mrs. Gardner: Yes, certainly.

Mr. Philip: The group you represent here today: they each paid their own way and you have collected money for the bus?

Mrs. Gardner: Yes, we hired two buses and we charged \$1 apiece.

Mr. Philip: You received no contribution for that from any political party or from anybody on this committee?

Mrs. Gardner: No, we have tenants' associations. In fact, in all the buildings-- We would gladly accept that. I would be glad to get some contributions here, if there is anybody with a few bucks.

Mr. Philip: I just wanted to reassure one of the members of this committee that we did not finance this group here today. They came out because they are very concerned about what the government has not done.

Alderman Johnston: They will come again.

Mr. Mitchell: That was recognized. If you cannot take a little leg-pulling, something is screwy.

Mr. Chairman: Adjourned until tomorrow morning following routine proceedings.

The committee adjourned at 6:29 p.m.

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Government
Publications

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CITY OF TORONTO ACT

FRIDAY, JUNE 4, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
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Brandt, A. S. (Sarnia PC)
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Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Barlow, W. W. (Cambridge PC) for Mr. Brandt
Bryden, M. H. (Beaches-Woodbine NDP) for Mr. Swart
Philip, E. T. (Etobicoke NDP) for Mr. Renwick
Piché, R. L. (Cochrane North PC) for Mr. Eves
Pollock, J. (Hastings-Peterborough PC) for Mr. Mitchell

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of Municipal
Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

Staff: Revell, D. L., Legislative Counsel

From the Ministry of Municipal Affairs and Housing:

Donaldson, B. T., Senior Policy Adviser

Witnesses:

Grin, A. B., Private Citizen
Rumm, S., Urban Development Institute; Executive Vice-President,
First City Development Corporation

From the City of Toronto:

Fram, M., City Solicitor
Kanter, R., Alderman, Ward 5
Tomlinson, P., Program Manager, Policy Section, City of Toronto
Planning and Development Department

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, June 4, 1982

The committee met at 11:49 a.m. in room 151.

City of Toronto Act
(continued)

Resuming consideration of Bill Prl3, An Act respecting the City of Toronto.

Mr. Vice Chairman: The committee will come to order. We have two witnesses to come before us today. The first is Alderman Ron Kanter.

Alderman Kanter: Thank you very much. I would also like Mr. Grin to sit at the table with me. He is a tenant in one of the buildings affected in our ward.

The Vice-Chairman: Mr. Grin, I hope you find the chair comfortable.

Alderman Kanter: I know you have heard other deputations from the city of Toronto, from the mayor and other members of council. I hope briefly to supplement their comments with a few observations about the situation in general, attempting to put this particular proposal for demolition control into the context of the housing situation in Toronto today. Secondly, I will have some brief comments about the situation in ward 5 which I represent.

First, I would like to emphasize, particularly for the members of the committee who may not be familiar with the city of Toronto, the fact of just how many more homes are occupied by tenants than by owners in the city of Toronto. According to information supplied to me from the planning department, there are 152,000 tenant-occupied units in the city of Toronto, compared to 96,000 owner-occupied units. That is to say more than 60 per cent of the dwelling units in Toronto are tenant-occupied.

Many of these tenants feel they are living in a state of siege, either actual or impending, due to the pressure to demolish their homes. As well as the actual demolition of homes, there is great concern that when owners have other uses in mind, the maintenance and cleanliness standards may decline. In many situations with which I am familiar where we are faced with an application to convert, I get many phone calls from tenants about declining building standards, health standards, things of that nature. As you can imagine, the pressure to demolish apartments is the greatest where older buildings are concerns; these are usually low-rise, three- or four-storey walk-ups, close to downtown or close to good public transit.

I know that Mayor Eggleton brought some figures to you and talked about the number of demolitions proposed, under way or completed during the period 1976 to 1980, and he suggested that demolitions involved 24 buildings containing just under 900 units.

In my view, that is just the tip of the iceberg. Unless we get some strong protection against demolition of apartments, the situation is going to become much more serious in the city of Toronto.

I have information that there are 22,644 apartment units built in 1960 or earlier. Many of these units are of the type I described: older buildings, low-rise buildings and close to downtown. The tenants of these buildings are the people who will be at risk if you do not pass some form of demolition control legislation. I submit that the problem affects many more than 1,000 or so people. People in up to 22,000 units--and I am talking about units, not people, because obviously with multiple occupancy you are talking about more than that number of people--will risk losing their homes if the city of Toronto is not allowed to take effective action to prevent demolition.

In addition to those general comments, I do want to say a few things about ward 5. I think it is most appropriate that this bill stand in the name of Susan Fish. She was my predecessor on city council from ward 5, and many buildings in ward 5 fit the category described above: older buildings, centrally located, close to the heart of the city.

11:50 a.m.

One of the buildings I would like to talk about is 213 Davenport Road, just east of Avenue Road on Davenport. Mr. Grin is a tenant in that building. Right now that building contains 55 rental units. They rent for modest sums; they are small apartments; they provide accommodation for just slightly more than 55 people. They are basically single-person apartments. In some cases there are single-parent mothers in the building. A luxury townhouse development has been proposed for that site.

I have not been told the exact cost of the units, but I do not think I would be wrong if I suggested that at a bare minimum we are talking about at least a \$250,000 per unit, so obviously with that cost the type of people that are going to be housed there are much different than the people currently at 213 Davenport Road.

Mr. Grin and the other tenants in the building have been working very hard with other tenants' groups to see what can be done to prevent the demolition of this building. There may be some alternatives. It might be possible under some circumstances to replace these units with similar units. However, I know you have seen the statistics; you have seen the figures; you have seen how little new apartment construction has been going on in the city of Toronto and the rest of Metro. It certainly seems that this is not a time when we can afford to lose any more moderate rental accommodation.

I want to mention two other buildings. The first is at 155 Balmoral Avenue, east of Avenue Road and south of St. Clair Avenue West. It has 48 rental units. There was a recent proposal before council to replace the 48 rental units with 14 townhouse units--again, luxury townhouse units. The second is at 224 Lynwood Avenue, where a substantial number of rental units were demolished for a smaller number of luxury condominium units.

Mr. Chairman, I do not know whether you have previously seen the document on the prices put out by the city of Toronto planning department. It happens that the picture on the cover of the report is of the hoardings as 224 Lynwood Avenue is being demolished. That is also in my ward. These buildings are not far from here. They are located along Avenue Road just north of Queen's Park. I would invite any member of the committee who wants to tour these or other threatened buildings in my ward to please do so. I would be extremely pleased to have them do so.

We are not talking just about buildings but about people, and we are talking about something in the area of 22,000 units, 22,000 homes. Therefore, I think it is extremely important that this committee view favourably the proposal of the city of Toronto. Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Philip had a series of questions.

Mr. Philip: Thank you, Alderman Kanter. The point was made yesterday--and I believe similar statements have been made by certain members of the Legislature--that this kind of legislation will result in certain landlords allowing their buildings to go into poor condition and poor upkeep as a way of demolishing them under the exception to this bill.

I am wondering if you can tell me if you feel that the City of Toronto Act, which gives the city powers very much stronger in terms of bylaw enforcement than any other municipality, gives you enough power to make sure that the buildings are kept up, and whether you think that this is simply a red herring that the people opposed to the bill are introducing?

Alderman Kanter: Mr. Philip, I certainly have had some experience in trying to improve and maintain the maintenance standards of buildings, for example, 213 Davenport Road.

Since a number of maintenance problems were brought to my attention at that particular site, the tenants and I have initiated a considerable number of improvements in the maintenance in that building and I am sure that we would retain all of those powers under this new legislation. Conversely, I would point out that we are in some cases having maintenance problems now where owners may contemplate the possibility of conversion. I do not think that passing this legislation would affect the problem of maintenance substantially either way. I do not think it would make it better and I do not think it would make it worse.

Mr. Philip: It is interesting that a report which the minister has not yet released shows that with respect to rent review, which was touted as going to have a major negative effect on the maintenance of buildings, research that is now in the minister's possession, but not in the public's possession, indicates that was a lot of nonsense, that it does not do that. What you are saying then is that this will not have an effect one way or the other.

Alderman Kanter: That is my understanding.

Mr. Philip: There are a number of businesses in this area that rely on the kind of people that live in these apartments. For want of another word, they are ethnically oriented or oriented towards the service of certain people. I am thinking of kosher butcher shops and things like that. What would happen to these businessmen if these buildings are allowed to be torn down and luxury condominiums go up?

Alderman Kanter: I think that is true certainly in my area, and I am thinking of the two main commercial streets, Bloor Street to the south and St. Clair to the north, where we have concentrations of Hungarian, some Greek, some Italian and some Korean small businesses. For the most part, they are almost entirely, I would say, family-owned businesses. These are not the large chain type of operations. I think the tendency would probably be--and I do not know that it would follow absolutely--if the low-rise apartments were redeveloped into luxury condominium form, for rents in the adjacent commercial districts to increase very substantially, and quite possibly many of these people would be driven out by much higher rents.

As well, there is the question of changing occupational and demographic patterns. I suspect that stores in my part of Toronto have to adapt quite frequently to different ethnic groups coming in and out. The thing I would really be concerned about would be the rapid escalation in commercial rents adjacent to these premises.

Mr. Philip: So many of these small businessmen would be affected by the increase in rents rather than the loss of the customers?

Alderman Kanter: I think so.

Mr. Philip: Would you say that a majority of the people that live in these buildings could not afford to move into the kind of buildings that would be constructed?

Alderman Kanter: I certainly think so. I would like to ask the indulgence of the chair as perhaps Mr. Grin might want to comment on that. Is that permissible, Mr. Chairman?

The Vice-Chairman: We could certainly hear from Mr. Grin, yes.

Mr. Grin: I would say the place where we are now is one of the cheapest places you could find within a square mile. Some old-age people live there and some students and people who are trying to find their place within a city. They use it as little more than a transit. The great majority of the people cannot afford to find anything on the higher level of comfort or luxury or convenience.

The Vice-Chairman: What sort of rent would you be paying for what sort of accommodation, Mr. Grin?

Mr. Grin: Out of 55 units, about 40 are bachelor and they range around \$200. I say "range" because there is very little difference. When rent controls came in, whatever lease was there had

to be kept. There are also so-called one bedrooms, which means there is a bachelor with a little alcove with what I call a harmonica door the size of a bathroom, roughly 10 by 10 feet, and they cost a little more. Again, it depends on the original terms of the lease at the time when rent controls came in. It changed ownership about a year ago. New owners, who actually were developers, got it for the purpose of developing it into something else. They did not renew leases. Obviously they do not want leases.

12 noon

Mr. Philip: Mayor Lastman has made a number of statements against any kind of control and he gives an example. He says, "Take heating, for example. These buildings"--and he is talking about buildings in North York, just a little north of you--"were heated by coal, which could be done in the 1950s for about \$13 a ton. Over the years the furnaces were converted to oil. By 1970 oil sold for 20 cents a gallon. Today a gallon costs \$1.72. So in fuel alone the cost has risen from an insignificant part of the total rent into a major expenditure".

Then he talks about boilers not being efficient, about no insulation in the walls and roof and so forth. He concludes that what you have are "time-bomb buildings," and that passage of control, even the more moderate controls that were proposed municipally in North York, would end up in creating slums. Would you like to respond to that accusation?

Alderman Kanter: Yes, I certainly would. There is no doubt about the accuracy of some of those observations with respect to increases in costs of fuel, or the necessity to renovate or restore, or in some cases renew and revitalize things like insulation. It is my understanding that the rent review process takes those things into account. Higher costs and major capital expenditures are passed through to the tenants. There is certainly nothing to discourage people from doing that.

In fact, what we are seeing in the city of Toronto is a much greater emphasis on renovation and restoration. Maybe the trend has not hit North York with the same degree of impetus as it has the city of Toronto. I know at one of the city committees I am sitting on we recently had a report on energy costs, the energy implications of demolishing buildings as compared to refurbishing them. Personally, I think we should be going very much in the direction of maintaining and restoring buildings rather than demolishing them and putting up new buildings. The costs in energy terms alone are very high.

The last comment I would make is on the colourful turn of phrase, "time-bomb buildings." It seems to me that what we are really dealing with is much more of a human problem rather than just one of bricks and mortar. I think it is the people who are displaced or who will be displaced or who have been displaced who are the real time bomb, rather than the buildings. The buildings can be restored and repaired. It is people out in the street--

Mr. Philip: Cultural organizations and the people cannot.

Mr. Kanter: --who are going to be the real problem.

Mr. Philip: You may rather not answer this question and may rather have counsel for the city of Toronto answer it. I eventually want to ask them to do that. Both the board of trade and the Toronto Real Estate Board have made the accusation that this is somehow an end run around the Planning Act. I do not have the real estate board's paper here, but the words of the board of trade are that "the cumulative effect of Bill P13 would be to render planning controls complex, unintelligible and misleading and to condone procedures that would be open to abuse."

The real estate board yesterday was much more specific on that. It said: "We note that the draft bill does not provide the protection of section 45(6) of the Planning Act, wherein the general legislation compels the issuance of a demolition permit where a building permit has been issued to erect a new building on the site of the residential property sought to be demolished within the specified time frame."

It goes on about the right of a public hearing and so forth. Would you like to comment on that or have you been enlightened on what happened yesterday?

Alderman Kanter: I could comment in general terms and then you might want to ask our counsel to comment in more specific terms on the sections of the act you raise.

This bill is essentially an evolution rather than an end run around the Planning Act. Yes, we have fairly complex planning legislation now in effect in Ontario. It started back in 1948, or perhaps previously, and we now control many things. The argument that it is interfering with the right of a land owner to do what he wants with his lands went out the window with the first zoning bylaw or the first official plan. We have had those for many years.

On balance, I think the impact of planning legislation has been good rather than bad. It seems to be a continuing evolution of the Planning Act rather than any sort of change of direction. I would certainly draw the attention of people who are concerned about the legal process, as I am, to the fact the proposed legislation does provide an appeal to the Ontario Municipal Board. Provincially appointed people, the chairman and the members of the board, will be deciding and will ultimately have the power to comment on or overrule the decision city council makes. So there is some protection maintained under the city's legislation. Basically, it is a continuing evolution of the planning process.

Mr. Philip: In keeping with the way in which this committee proceeds, it is possible for a witness to say someone else can answer or give extra details about a position or a question that he has been asked. I am going to ask if Mr. Kanter would designate Mr. Fram to elaborate on that and then perhaps we can have an answer from Mr. Fram.

Alderman Kanter: I would be pleased to have his assistance.

Mr. Fram: Mr. Chairman, I was hoping to have the opportunity at some time to make a fairly extensive critique of Mr. Lord's presentation. I found it disoriented and confused,

particularly in regard to his reply to a question from the parliamentary assistant, which I thought was an extremely astute question, referring to appraisal values. I will not deal with that now because I am hoping, rather than put the committee out of its order, to deal with one point.

In my view, of course, subsection 6 is taken away. That is exactly the intent of the bill. There is no question about it. Although you may be entitled in law to a demolition permit, this says the council may refuse it under certain circumstances. It is clear and it is concise. It was drafted by myself with considerable help--not in the policy obviously, but in the draftsmanship--by legislative counsel. It is unambiguous in its terms. What it boils down to finally is a question of policy.

In my humble submission, there is protection here to the owner because the most that could happen to him is that his potential development is postponed. In any appraisal value, for example, all that will happen is that he will have one more factor to consider. If he has to rezone anyway--as I say, I speak these remarks off the cuff because I was not here to speak--and has to come to council for that, then this, in an appraisal sense, is just one more factor. It is just one more risk. I do not think it will really matter at all in the appraisal. The present value of the future potential will be the same where he has to have a rezoning.

In my humble submission, this bill, although it clearly takes away the rights he formerly possessed--do not forget section 45 came into being as a result of the present government's willingness to introduce such legislation generally after the city of Toronto--and I had the honour to be here at that time--had applied for demolition control. I had some input into the very drafting of section 45. Subsection 45(6) is really a compromise. It compels the person to build under penalty of a considerable amount of money. He gets it subject to conditions.

12:10 p.m.

In the opinion of our city council, the situation has become so grave that that section for a terminable time has got to be replaced by another piece of legislation which postpones. No one has ever suggested this legislation should be permanently engraved in stone in some way forever. The developers will never be able to realize potential in this fashion. It is tied to a very specific event. Some may or may not think that is a good example.

Our council believed on planning evidence that rent control was the most objective way of tying it. If you tie it to anything else it becomes subjective and difficult to enforce. This will die when rent control dies. That is the best answer I can give you.

Mr. Rotenberg: Mr. Fram, you said when they were rezoning anyway it did not make much difference on appraisal. You did not comment on where there is no rezoning required.

Mr. Fram: Where there is no rezoning required, there is a postponement. There is definitely some postponement and there will be some effect. There is no question that a person has a right, but

that occurs in the purchase and sale. I know of no person who would not protect himself in this law in an offer of purchase and sale and make it conditional. The argument made yesterday, I think, is irrelevant.

I do believe there will be some effect. I think it is nonsense to say there will be no effect on a person's right to turn a building into luxury condominiums. If you say that sort of thing, then you are talking foolishness. There is an effect, but I think it is a postponement. It is not an outright denial, it is a postponement of the realization of the development potential. How much you put on that is a matter for calculation.

This is a type of legislation from which--and I do not think that is to be denied for one moment--there is an effect, but rent control is also an effect. So is this government. I have had the privilege to watch this government over many years. It depends on how you put it, I suppose. It has progressed--

Mr. Rotenberg: Conservatively.

Mr. Fram: I would prefer to think it has progressed in forms and in ways that it would have been impossible when I first joined the city to predict. Rent control in itself, the way it was introduced and how it was introduced, is an abrogation of the right of a person to do whatever he wants with his land. To say this is not an additional one would be foolish but it is, I hope, a temporary one. On the balance of social needs, it is a necessary one. That is all I can really add to this.

The Vice-Chairman: Perhaps I could ask one question.

Mr. Philip: I do have the floor but I do not mind if you ask a question, Mr. Chairman, as long as you recognize I do still have the floor.

The Vice-Chairman: Alderman Kanter indicated the potential problem is extremely widespread and pervasive. It appears the thrust of this legislation is to preserve existing neighbourhoods and preserve the existing housing mix within those neighbourhoods. I am still troubled with what is the intent of the city of Toronto's zoning bylaws. Is that not to develop the type of community you want to develop?

Mr. Fram: Yes, that is so. The zoning and official plan amendments, as was mentioned by the mayor, are put in place and are for long-term planning. This is a sudden crisis. That is all I can say. That is the view of our council, and I think it is the view of many people who are well informed on the subject.

The Vice-Chairman: If it is a zoning problem--

Mr. Fram: No.

The Vice-Chairman: To an extent it is a zoning problem. Cannot the zoning bylaws be changed?

Mr. Fram: The zoning bylaws cannot be changed because, regrettably, the aim we have attempted to achieve in a series of bylaws, which I shan't bore you with but which were in the 735-80 series of bylaws, were dealt with by the Divisional Court. I am now talking completely from memory. Mr. Justice Saunders, speaking for the Divisional Court, said that it was a meritorious idea to preserve the existing stock but that, regrettably, it was not in the Planning Act. If it is not in the Planning Act, you cannot pass a zoning bylaw.

Leave to appeal was refused by the Court of Appeal, which is the highest court in this province. Had that been so, there was no point in going to the Supreme Court of Canada because--

The Vice-Chairman: I was thinking that this would guarantee through another mechanism, in terms of development zones or downzoning and that sort of thing, the same sort of objective you are seeking here.

Mr. Fram: I know of no mechanism that will achieve what the city of Toronto wants to achieve that can be done legitimately under the Planning Act as it presently exists.

Mr. Rotenberg: If you took this building on Davenport Road and downzoned it to one-time coverage or 50 per cent coverage--

Mr. Philip: Mr. Chairman, I was asking the questions. If the parliamentary assistant, who is not a member of the committee, wishes to make a policy statement, I would be happy to give him the floor.

The Vice-Chairman: All right. We will let him ask the question.

Mr. Rotenberg: Carry on. I will ask my questions when you are done. I am sorry. I had a problem with the idea, that is all.

Mr. Philip: I would like to ask you, Alderman Kanter, a question I have asked Alderman Johnston and Alderman Sheppard. I am not sure if I asked it on the record or off the record. I think it was in the hallway, so it would be off the record. It is a basic problem we will be facing.

We have a situation where there are a number of people who want to speak to the committee. The House will be closing down sometime between now and August, I would think. What I am concerned about is if this bill does not pass, or even it does pass the committee stage and does not get into the House, is do you have enough powers in the city to delay the destruction of those 22 buildings or perhaps even more that may be coming up and to stop a run on demolition during the summer months if this bill is not passed before the House adjourns?

Alderman Kanter: Mr. Chairman, it is my personal view that we do not now have adequate power. That is why we are applying for it. We do not even have it on a temporary, short-term, stopgap kind of basis.

Mr. Philip: You do not have delaying power to get it over the summer months?

Alderman Kanter: No, I do not believe we do.

The only case I am familiar with where we would have a temporary delay or temporary hold would be if the building happened to be designated historic, which is not the case in the majority of these types of apartment buildings.

Mr. Philip: I have seen some of these buildings. Some of them look old but not historic. Mr. Fram, is that your understanding?

Mr. Fram: Yes, I believe that is so. Basically, that is correct, yes.

Alderman Kanter: Could I supplement that response, if I might? Let me comment very briefly on that.

There is a situation where the demolition control legislation we are seeking would have a different effect from the city bylaw. In the 213 Davenport Road situation, for example, the proposal is to replace 55 units of moderate-income rental housing with 55 units of very expensive townhouse condominiums. It would be permitted under the unit-for-unit city bylaw. It might, however, be prevented by demolition control.

12:20 p.m.

Mr. Philip: If I understand your answer, there is a very real possibility that if this bill is not passed before the House recesses, there may be a surge involving more than 22 buildings. There may be a whole bunch of people who say, "We had better demolish the buildings now before the bill comes back in the fall."

Would it be your understanding that if the government sees this bill is not going to have an opportunity to be dealt with in the House before the recess, it would at least have the responsibility to introduce some very short-term legislation putting a freeze on the demolition of all buildings in the city of Toronto, until such time as this bill was dealt with? Would that be of assistance?

Alderman Kanter: To whom are you asking the question? Either of us?

Mr. Philip: I got "yes" from Mr. Fram and I assume--

Alderman Kanter: You would get the same answer.

Mr. Philip: Following from that, I would ask the one man who can give us a policy statement on behalf of the government, namely, the parliamentary assistant to the minister, if he would give a commitment to this committee that if the committee passed the bill he would go to his House leader and urge on him the importance that this bill be dealt with before the House recessed?

Failing that, would he be prepared to introduce in the House an emergency bill that would at least put a freeze on the demolition of all buildings in the city of Toronto described in this bill until the Legislature had an opportunity to deal with the bill? I ask that of Mr. Rotenberg.

Mr. Rotenberg: A moment ago Mr. Philip called me to order because I was interrupting when Alderman Kanter was the witness. I suggest that the question is more in order when the witnesses are gone and when there is time for me to speak.

Mr. Philip: I think it is perfectly in order to ask for a policy statement when we have someone here who is representing the government. If you are not prepared to answer that question, simply state it. I have a right, as a member of this committee, to ask a question of the government, and you are the government here.

Mr. Rotenberg: Mr. Chairman, of course he has the right to ask a question of the government. I am more than pleased to answer it. I was just drawing to his attention that he is very selective of when he wants me to speak and when he does not want me to speak. If I am to be treated as someone who is here--

Mr. Philip: I want you to speak when I ask you a question. I do not want you to interrupt me when I am asking questions. That is the rule of the committee and you should learn, after all your years on council, how committees run.

The Vice-Chairman: Just a minute, Mr. Philip.

Mr. Philip: I have asked the question. Will the parliamentary assistant answer my question?

The Vice-Chairman: In most of these cases the parliamentary assistant expresses his comments and the comments of the ministry at the time we are dealing with the clause-by-clause consideration of the bill. We ordinarily ask the representatives of the ministry what the ministry's position is on that particular clause or that particular subsection.

I think that to ask him now if he is prepared to do this or that or the other thing is somewhat premature and, under the circumstances, it might be a bit unfair in view of the fact that he has not had an opportunity to discuss it with officials.

Mr. Philip: Mr. Chairman, on a point of order.

Mr. Rotenberg: You asked me a question. May I answer it?

Mr. Philip: No. I had a point of order.

Mr. Rotenberg: Go ahead. You asked me a question but you will not let me answer it.

Mr. Philip: I am letting you answer, but I have a point of order and a point of order takes precedence over anything else. You still have not learned parliamentary rules.

The Vice-Chairman: All right, your point of order.

Mr. Philip: I will give you a book on it. You can study it during the summer.

Mr. Rotenberg: I know the parliamentary rules and I also know courtesy.

Mr. Philip: You may know it but there is a difference between knowing it and practising it.

The Vice-Chairman: Your point of order, Mr. Philip.

Mr. Philip: Mr. Chairman, the point of order is that you are here to enforce the rules of the committee, not to act as an apologist for the government, as you have been doing.

The Vice-Chairman: I am not in any way acting as an apologist.

Mr. Philip: Then you would know that it is perfectly appropriate to ask for a policy statement when a matter is being dealt with by a committee. That is what I have done, Mr. Rotenberg.

Mr. Rotenberg: Mr. Chairman, I simply point out to Mr. Philip that as a matter of order certainly it is in order for him to ask the government a question. But if we are in the middle of dealing with a witness and there are other questions of the witness and other people want to ask questions, it would seem to me to be proper and in order--I do know order, Mr. Philip--to wait until the witness is finished and then ask the question.

However, the question now on the floor and the question basically as I understand it is, if this bill passes this committee before the House rises, whenever we are rising for the summer, will I do whatever I can to see the House leader brings it before the House? Mr. Chairman, I think I can answer that with a yes.

Mr. Philip: Obviously you did not listen to the question then, Mr. Rotenberg. It was a three-part question. You choose to answer what you want, I guess. The question was, will you, if this bill is not going to be dealt with, be prepared to introduce emergency legislation in the House, putting a freeze on demolition until such time as this bill is dealt with in the House?

Mr. Rotenberg: The question was, if the bill passes the committee, will I see that it gets to the House as soon as possible? The answer is yes. If the bill passes committee and gets to the House as soon as possible, there will be no need for emergency legislation.

Any bill that passes a committee before the House rises will get into the House. I will do whatever I can to make sure that happens. Therefore, if the bill passes committee, there will be no need for emergency legislation because the bill will get to the House.

Mr. Philip: If this bill does not get through this committee, if the hearings then are not finished--you know what I am asking, and I want an answer to it. If the bill is not going to be dealt with in the House before the recess, will you introduce emergency legislation to put a freeze until such time as the bill can be dealt with in the House so there is not a run on buildings and demolition during the summer months?

Can you answer the question? There are two ways of answering it. One is yes; the other is no. I am sure you are familiar with the English language and that you know both of those words. Will you please say one or the other?

Mr. Rotenberg: The question now is slightly different than it was before. The question before was premised upon whether the bill passes committee. Now the question is, if the bill does not get out of the committee or is still stalled there, will I or the government be prepared to introduce emergency legislation? I am not prepared to give that commitment at this time.

The Vice-Chairman: I tried to tell Mr. Philip that long ago in a slightly different way and with a certain amount of reasoning. Are there any other questions? Ms. Bryden had some questions.

Ms. Bryden: Just one. Mr. Kanter mentioned what has been going on. Have you any statistics as to the rate of acceleration of the applications for demolitions that are legal under the present law?

Alderman Kanter: Yes. I believe the mayor may have referred to the same figures in the presentation he made to the committee on Wednesday. In this report, there were some statistics about the number of demolitions. During the period 1976-1980, three building were demolished. They contained about 90 apartment units. Since 1980, 24 buildings, containing just under 900 units, were demolished. That is a very substantial acceleration of demolition.

Ms. Bryden: Yes. Unfortunately, I was not here when the mayor was here because I was in the consideration on the Planning Act. It is quite evident the Planning Act does not prevent the kind of demolition that is going on.

Alderman Kanter: Yes. If I could also point out, in answer to an implied question from the chair, would tighter zoning controls prevent some of these demolitions? it might be of interest to the committee that, in the three cases I mentioned, 213 Davenport, 155 Balmoral and 224 Lynwood, in none of those cases was a rezoning required. It might be a committee of adjustment. It might be no change at all.

The Vice-Chairman: Surely the city would rezone or downzone.

Alderman Kanter: There might be other problems involved in that. A good number of these buildings may already be nonconforming uses. They might be over the existing zoning for the area, and other problems may arise. Quite frankly, I have not thought through that aspect of the proposal. I would be glad if perhaps city staff might want to comment on that possibility.

The Vice-Chairman: I just saw this legislation which was ostensibly designed to preserve neighbourhoods and particularly the existing housing mix coming into conflict with your official plan and your zoning bylaws, which were designed substantially to create the community the city of Toronto wanted.

Alderman Kanter: It has been my experience that zoning bylaws have been more effective in guiding new development rather than preserving older development, just in general.

Mr. Philip: Was it not pointed out fairly clearly yesterday to this committee by counsel for the city of Toronto, Mr. Fram, that the case of Axelrod versus the city of Toronto clearly indicated you could not use zoning for the purpose of demolition control? That was upheld by the Ontario Municipal Board and it has been upheld by the courts. Your question simply seems to recycle the same issue over and over again when council has clearly indicated it could not be used and the courts have said so.

12:30 p.m.

The Vice-Chairman: The Axelrod case was a certain situation where the city moved after the application for permit was made. Was that not the case?

Mr. Fram: No. Axelrod was an application for mandamus. He was denied that because his specifications were not in order; he was in breach of a great many other things, and so on. The court made a ruling on the bylaw and the words of the court--I do not have the case in front of me at the moment--were to the effect the zoning was wide enough in the ambit so as to prevent any zoning use or mechanism to preserve existing stock.

That is the difficulty. When the Court of Appeal refused leave that we asked for, that was a very wide decision in the Axelrod case. I think that effectively closes the door to the use of zoning mechanisms. That is one of the reasons why we are here. We intended to be here anyway because it was intended that 735-80, 734-80, the Swansea one and the city one--I think it was 735-80 because it was Forest Hill's bylaw; that is where the properties were, but that is part of the city of Toronto--had effect for only two years. It was a temporary hold so the study could be effectively carried on--

The Vice-Chairman: Development zone, so-called.

Mr. Fram: Yes. Since we have lost Axelrod, I think we are in your hands.

Ms. Bryden: I just wanted to comment that from what Mr. Kanter has told us and from the other deputations, it is certainly evident there is a vacuum in legislation to prevent demolition which will destroy neighbourhoods and dehouse a lot of people of very modest income, particularly many senior citizens. I think that is something we should be concerned about. That vacuum must be filled and filled promptly.

w Mr. Spensieri: We heard suggestions yesterday to the effect that this legislation purports to be casting too wide a net. It seems to apply to units which are now not covered under the rent review legislation. Do you have any examples from your ward of any buildings which are in this endangered species which are not now subject to rent review legislation? Would you comment further on the desirability of extending demolition control to buildings which are not now under the purview of the rent review provision of the Residential Tenancies Act?

Alderman Kanter: Certainly the three buildings, as far as I am aware, are all, or have been, under rent review. In one case it has been demolished, in one case it is boarded up, and in one case, where Mr. Grin lives, it is still around.

I was not here for the discussion yesterday. I do not know offhand of any buildings that would be covered where rent review is not in effect. I suppose if there was a very new building it would not likely be demolished. A very luxurious building with high rents is not likely to be demolished.

Mr. Spensieri: So you would not see any harm or any reduction in the effectiveness of this bill if it were to be specifically tied in to buildings which are now exempt from rent review legislation.

Alderman Kanter: I would like to have more information to see if there were any such situations. As you know, nonprofit housing, Ontario Housing Corporation, student dormitories, are exempt from rent review. I am not sure whether it would be a good idea to exclude them from the operation of this bill or not. I would ask members to take a careful look at the implications.

Mr. Spensieri: Mr. Chairman, I sort of resent being put into this stampeding mentality where we say we must approve this immediately because of the possibility there is going to be a run on demolitions. If the building is now empty, that is to say all tenants have been evicted or it has been kept empty specifically, then there would be a danger of a run on premature demolitions taking place in anticipation of this legislation coming into force in the fall. In cases where there are buildings already full of tenants, do you not consider the 120-day notice provision required for refurbishing or demolition, plus the delays in our courts in granting evictions, would be adequate protection over the summer months?

Alderman Kanter: If a notice of eviction were issued in the very near future, at the beginning of June, July, August, September, and the House normally resumes in the middle of October, I think there might a problem.

Mr. Spensieri: There are delays in court hearings. If the tenant does not move out willingly, there could be as much as another month and a half or two months before the case gets heard. I just wanted to get your views from your ward as to whether this committee can justifiably be put into what I would call a stampeding mentality. I just want to be sure we are not looking at a spectre here which need not be there.

Alderman Kanter: I guess you are asking tenants to rely on knowledge of the system, of the Landlord and Tenant Act, which they may not in every case have, and secondly, to rely to some extent on the delay of the courts. We know there are delays in the courts but asking people to rely on them as a matter of protection of their housing might not be the most satisfactory way of dealing with it.

Mr. Spensieri: I was not suggesting we should. I was just asking you from your own experience.

The Vice-Chairman: One question from Mr. Rotenberg. We have another witness I would like to hear.

Mr. Rotenberg: You mentioned the 24 buildings, the 900 units that have been demolished. Do you have the statistics as to how many units were built to replace those 900 units?

Alderman Kanter: I do not have those statistics. I could certainly undertake to try to obtain them if they are available from our files.

Mr. Rotenberg: Independent of the 24 buildings and the 900 demolished units, do you have any statistics on how many other rental units have been built within the city of Toronto in that period?

Alderman Kanter: Yes. The Metropolitan Toronto annual housing report--I just received it before the committee this morning--states there has been some construction. I am advised 15.

Mr. Rotenberg: Fifteen units or 15 buildings?

Alderman Kanter: Fifteen rental units. There have been an additional number of condominium units, but as far as rental units go, the number is obviously very small.

Mr. Rotenberg: How many rental units have been applied for rezoning or other things that may have been turned down by city council?

Alderman Kanter: I am advised by Mr. Tomlinson of our planning department that the number is zero.

Mr. Rotenberg: The number of new units is zero? Would you have any statistics of how many rental units have been applied for which may have been turned down by city council?

Alderman Kanter: Let us go directly to the planning representative, Mr. Tomlinson.

Mr. Tomlinson: Mr. Rotenberg, we did have one proposal in the King-Bathurst area for a large rental complex about a year ago that was going to make use of the Ontario rental construction loan program. That project switched to condominium after the necessary rezonings were obtained by council. At the moment there are no applications before us for private rental.

Mr. Rotenberg: Have there been any over the past two or three years that have been approved and not built, or have been not approved?

Interjection.

Mr. Tomlinson: None at all. Is that private rental or assisted, alderman?

Alderman Johnston: It is a private rental, with 366 senior citizen housing units in it.

The Vice-Chairman: Alderman Johnston, I wonder if you could use a microphone please.

Alderman Johnston: There is one you would be familiar with, Mr. Rotenberg. It used to be in your ward. It is over the TTC yards at Davisville. All approvals have been obtained by both the city and the Ontario Municipal Board. It includes 366 units of senior citizen housing which would be built by the developer for Metro, but nothing has happened. I am told financing is the problem.

Mr. Rotenberg: Are there any that have applied to council and have been turned down by council?

Alderman Johnston: I do not believe so.

Mr. Stevenson: Alderman, you stated you had experience with renovation of some of these smaller apartment buildings. When they are renovated, are the rents sufficiently high that many of the former residents cannot afford to stay in them, or are they renovated to a point that many, for example, senior citizens, would still be in those renovated buildings?

12:40 p.m.

Alderman Kanter: I would have to say that depends. I think the advantage of renovating and maintaining the building as rental is that there will be less of a price increase. There is a whole spectrum of renovations obviously--minor stuff like insulation and total retrofit kind of thing. There is a range of price increases, unlike demolition which invariably results in a very high-priced, luxury-type replacement of the building.

There is no question that in some cases total renovation results in a considerable cost increase.

Mr. Philip: May I ask a supplementary to that? Is it not true though that renovation results in the removal from rent review of the building in regulation 9, and I believe it is section 22 or 28 of the Rent Review Act. Therefore, renovation not only evicts tenants, with their right to go back if they can afford the price, but it also removes the building from rent review.

Alderman Kanter: I think you are correct in that there are situations, renovation of a certain type--and I think that is construed pretty liberally by the rent review commissioners--so that would be a problem. That problem could be resolved by tightening up the rent review legislation.

Mr. Philip: I agree. I have a private member's bill that would do that.

The Vice-Chairman: Thank you very much. The next witness is Mr. Rumm of the Urban Development Institute. We have about 14 minutes available, Mr. Rumm. I hope we can fit your presentation within that time frame.

Mr. Rumm: Mr. Chairman, if that is the case, are you reconvening after lunch?

The Vice-Chairman: No.

Mr. Rumm: Are you reconvening again?

The Vice-Chairman: We will be sitting again on June 16. We will find out how our timetable is on June 16, but that seems to be the only day we will be sitting.

Mr. Rumm: I would like the opportunity on behalf of the institute to have sufficient time to present the points I have asked the clerk to hand out.

The Vice-Chairman: Would you sit down at the microphone please?

Mr. Rumm: It would seem to me that it would be only proper on a matter of such importance that we have sufficient time to pursue the matter if it is required.

The Vice-Chairman: How long would you think you would require?

Mr. Rumm: My presentation will probably take in the nature of 25 or 30 minutes, but I am not aware if there would be any questions after that.

The Vice-Chairman: Would the committee by unanimous consent agree to sit until 1:30 p.m.?

Mr. Rumm: I am quite prepared to come back, Mr. Chairman, if that is the desire of the committee.

Mr. Philip: It is not fair to the witness to ask him to come back. He has taken off the whole morning and he has sat here patiently. Why can we not sit until 1:30 p.m.?

Mr. Barlow: The witness has offered to come back.

The Vice-Chairman: June 16 is full. It looks as if we will need another day for hearings on this legislation. I just thought that if we could sit until 1:30 p.m.--

Mr. Philip: I will agree.

Mr. Spensieri: Let us at least have the presentation, Mr. Chairman, and then the questions can be asked. I feel some culpability in this matter.

The Vice-Chairman: All right. Could we make it 1:15 p.m. then? He indicated he wanted about 25 minutes for the presentation.

Mr. Philip: It is not fair to the witness to do that to him. A number of us will have questions no doubt. The Urban Development Institute always has a very well thought-out, well-researched brief whenever it comes before a committee of the Legislature and we simply cannot deal with it in that sort a period of time. It is not fair to the witness.

Mr. McLean: I agree with Mr. Philip that it would be more reasonable for him to make one presentation at one time. Unfortunately, I have riding office appointments this afternoon and I have to be out of here sharp at one.

The Vice-Chairman: Then, Mr. Rumm, I think it would be best to defer your presentation and consideration of your brief until same later date. June 16 was the other date that we had scheduled for presentations on this bill. It looks as if it is full, so we will have to obtain another meeting date and have the clerk contact you and advise you.

Mr. Rumm: Thank you very much. Mr. Chairman, I had asked the clerk to hand out some notes which were going to be the basis of my presentation today. As there may be changes between now and when it is that you are going to call me and I may wish to make additions or changes, might I ask that the notes be returned to me so that I can do that?

The Vice-Chairman: Certainly.

Mr. Philip: Mr. Chairman, may I ask that you look into the possibility of scheduling an extra evening hearing or something like that because it seems very important. Since we cannot get any commitment from the parliamentary assistant to consider even emergency legislation, I want to make sure that this bill at least passes the committee and goes to the House before the House adjourns.

The Vice-Chairman: I will raise the question with the chairman on his return and try to arrange a generally acceptable time at which the committee can meet to deal with this and whatever other presentations that might want to be made.

Mr. Philip: None of this would have happened, of course, if the committee had been called in that three weeks when it did absolutely nothing and knew that it had the bill on its plate.

Ms. Bryden: Or if the Liberals had been here a little earlier today.

Mr. Rumm: Thank you very much. I will make myself available when you require it.

The Vice-Chairman: Thank you. We stand adjourned.

The committee adjourned at 12:48 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

TOWNSHIP OF MOONBEAM ACT
CITY OF WINDSOR ACT

WEDNESDAY, JUNE 9, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Eakins, J. F. (Victoria-Haliburton L) for Mr. Spensieri
Lane, J. G. (Algoma-Manitoulin PC) for Mr. McLean

Also taking part:

Barlow, W. W. (Cambridge PC)
Newman, B. (Windsor-Walkerville L)
Piché, R. L. (Cochrane North PC)
Rotenberg, D., Parliamentary Assistant to the Minister of Municipal
Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

Staff: Revell, D. L., Legislative Counsel

From the Ministry of Municipal Affairs and Housing:
Donaldson, B. T., Senior Policy Adviser
Maitland-Carter, G., Solicitor, Legal Branch

Witnesses:

Cosman, J., City Solicitor, City of Cambridge
Kellerman, A. S., City Solicitor, City of Windsor

From the Township of Moonbeam:

Filion, A., Clerk
Filion, G., Reeve

From the City of Kitchener:

Ashley, Y., Licensing Supervisor
Wallace, J., City Solicitor

From the Windsor Amusement Association:

Chudyk, E., Member
Crane, J. D., Counsel
Groulx, D., Member
Masse, D., Member
Perrault, S., Member

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, June 9, 1982

The committee met at 10:06 a.m. in room 151.

TOWNSHIP OF MOONBEAM ACT

Consideration of Bill Pr32, An Act to continue The Corporation of the Township of Fauquier under the name of The Corporation of the Township of Moonbeam.

Mr. Chairman: I see a quorum. The first matter, relatively brief, is Bill Pr32. I will call it the township of Moonbeam, if I may. Mr. Piché is here to sponsor it and present it, with Gaetan Filion and André Filion. Do you want to identify which ones they are? Start your speech, Mr. Piché.

Mr. Piché: Thank you, Mr. Chairman. I am pleased to introduce to the committee this morning Reeve Gaetan Filion of Moonbeam, to my immediate right, and André Filion, the administrator.

Bill Pr32, An Act to continue The Corporation of the Township of Fauquier under the name of The Corporation of The Township of Moonbeam, will finally bring an end to the confusion which has existed for many years for the residents of not only the town of Moonbeam, but also the village of Fauquier.

The town of Moonbeam is a community of some 1,452 citizens, located 22 kilometres east of Kapuskasing in the township of Fauquier. Nine kilometres farther to the east is the village of Fauquier, lying in the townships of Shackleton and Machin; therefore the confusion.

Great difficulties have been experienced by both communities with the mail and other services on many occasions. Taxes, water and sewer payments were delivered to the wrong municipality. This was especially evident when money was collected through the banks, credit unions, caisses populaires and, needless to add, government projects are constantly being mixed up. Why this was not done before remains the mystery of our time. This is our case.

Interjections.

Mr. Piché: I have many letters of support but I just want to show you one that goes back maybe a year and a half ago from the Honourable René Brunelle, who was my predecessor. This is the way he addressed the letter and this is how everyone--

Mr. Eakins: Fine gentleman.

Mr. Piché: Fine gentleman, and he was replaced by another fine gentleman.

Mr. Chairman: That was implied. He implied that, yes.

Mr. Piché: I thought that was also very important.

Interjection.

Mr. Eakins: Who was that?

Mr. Piché: Mr. Brunelle addressed his letter to Reeve Gaetan Filion, Township of Fauquier, Moonbeam, Ontario. This is some of the confusion that is constantly being experienced with the town of Moonbeam and the village of Fauquier. This is what the bill is all about. We want to call it the township of Moonbeam instead of the township of Fauquier because of the town that is adjoining.

Mr. Swart: Question à M. Piché. Pourquoi pas le nom de Moonbeam en français?

Mr. Piché: Pourquoi pas le nom de Moonbeam en français? Monsieur le préfet, voulez-vous répondre s'il vous plaît. Moonbeam en français. C'est une bonne question. Je n'ai pas la réponse. Comment dit-on Moonbeam en français?

Mr. G. Filion: Moonbeam en français? "Rayon de lune."

Mr. Brandt: Let the record show that Mr. Swart can speak Romanian.

Mr. Swart: Just because you do not understand French is no reason why you thought it was Romanian. Just because you are French and I said that, you don't think that wasn't French, either.

Interjection.

10:10 a.m.

Mr. Brandt: He thought it was Romanian, too.

Mr. Piché: Like everybody else, I am learning every day, because I can honestly tell you I did not know Moonbeam in French was "rayon de lune."

Mr. Chairman: Are there any other questions of the reeve or the clerk or Mr. Piché?

Mr. Swart: I think it is a very picturesque name. I know it is from the village, but I commend them for choosing that name. It is one that will ring a bell. Everyone will know where it is.

Mr. Chairman: The member for Moonbeam has a much nicer ring than the member for Cochrane North.

Mr. Piché: Maybe I should point out for the record that the Honourable René Brunelle, who sat in the Legislature for 23 years, always lived in Moonbeam.

Mr. Swart: I just have to say I cannot picture the member for Moonbeam being in orbit.

Mr. Mitchell: We are just having some fun, really, at René's expense. We know he would not be here if the bill were not one that had the full support of the people there. I see no requirement for a great deal of discussion. I would move it be reported.

Mr. Chairman: Fine. He wrote that speech for you too, did he?

Mr. Mitchell: No.

Mr. Renwick: Mr. Chairman, is there any particular magic, René, in June 18 as the date on which it comes into force?

Mr. Piché: We would like to see this bill becoming law as soon as possible because of the difficulties. It would be nice to have it by then. June 18 is when we thought we would be adjourning the session, but now I hear we will be here until early July. Hopefully we are going home on June 18. The reason is because of the difficulties being experienced, as outlined earlier.

Mr. Swart: I thought maybe that was the date the ice was off the lake.

Mr. Piché: No, that is the end of May.

Mr. Chairman: Is there any further discussion regarding this bill?

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Section 4 agreed to.

Bill Pr32 reported.

CITY OF WINDSOR ACT
(continued)

Resuming consideration of Bill Pr6, An Act respecting the City of Windsor.

Mr. Chairman: Gentlemen, I do not see the minister or parliamentary assistant but we have a quorum and we have people here, so I believe we shall go ahead. When we broke last day, Mr. Crane had the floor.

Mr. Wallace: My name is Wallace and I had the floor. Mr. Crane got up to say he had not had an opportunity to speak in opposition. You had asked for anyone who was in support of the bill and I am here on behalf of the city of Kitchener. I had barely got started when there was an adjournment. I would point out there are also several other people here in support of this bill, so before Mr. Crane takes his seat, perhaps you will have to make room for someone else.

Mr. Chairman: Yes and no. We have a procedural problem here. Last day, only the city of Windsor was a scheduled witness. Kitchener was here as a bystander, not as an official representation.

Mr. Crane: That was going to be my submission, Mr. Chairman. Someone is going to get squeezed out.

Mr. Chairman: Yes.

Mr. Crane: It should be Kitchener because we are in opposition. We will come back when Kitchener's private member's bill is here. With all due respect to their solicitor, that seems to be where they should be. He had a chance last day. He has handed me a brief and I do not mind if he files it. Surely we should not be shot down in flames. We are the only people objecting to it. We should have a chance if there is a time problem.

Mr. Chairman: Would you sit down, gentlemen, so Hansard can pick up the recording?

Mr. Wallace: May I just recall to the chairman his remarks the last time, "We are always willing to hear people make submissions in support." I was gratified to hear that and I hope that policy will remain.

Mr. Chairman: It certainly is so. It is a matter of the timing of the representations.

Mr. Mitchell: Perhaps you could ascertain just how many people are here this morning who would like the opportunity to speak to the particular bill and then, looking at our time constraints, adjournment being at one o'clock, perhaps you might have the flexibility to allow them to speak.

Mr. Chairman: We are on a tight schedule, with estimates coming up and other bills. We really should finish this up today. It must be finished up today, otherwise it will not be finished for weeks, at least. Is there any indication from the solicitors as to the timing and the number of people here who wish to make representations?

Mr. Wallace: I am here with a submission which is very thin. I will only be about 10 minutes, depending on the number of questions I receive. I understand the solicitor for the city of Cambridge, Mr. Cosman, is here and wants to make representations.

Mr. Cosman: Mr. Chairman, my name is Cosman. I appear on behalf of the corporation of the city of Cambridge.

Mr. Chairman: Excuse me, gentlemen, we are not in court here. Everything goes through Hansard. If you do speak, it has to be through a microphone at one of the chairs. Also, do not stand.

Mr. Cosman: Thank you, Mr. Chairman. I appear for the city of Cambridge. I have very brief prepared remarks but I really am prepared to answer questions of the committee with respect to the problems our community foresees.

Mr. Chairman: Who else in the room wishes to speak to the committee?

Mr. Crane: Mr. Chairman, we have six witnesses and we are speaking against the city of Windsor bill.

Mr. Chairman: Yes, I know they are with you, Mr. Crane. The solicitor for the city of Windsor is here and two aldermen.

Mr. Kellerman: Mr. Chairman, I am the solicitor for the city of Windsor. I only have the clerk with me. I am expecting an alderman but she has not yet arrived.

Mr. Chairman: But you are here to answer questions rather than make another presentation, correct?

Mr. Kellerman: I am satisfied the committee has heard from the city of Windsor and realizes the problems the city faces in terms of this bill.

Mr. Chairman: Fine. What is the committee's wish? This is a little impromptu, as you can see. Do we go with 10 minutes for the solicitor from Kitchener, another 10 minutes from Galt, and then Mr. Crane will have the balance of the morning?

Mr. Renwick: That is agreeable with me.

Mr. Chairman: Fine. I did not get the name of the solicitor from Cambridge.

Mr. Cosman: Cosman, initial J.

Mr. Chairman: Would you please come up and take a chair here? You may wish to interject or agree. There may be some shortening to the proceedings if you can agree with Kitchener on various matters or disagree.

The chair was occupied by the vice-chairman the last time and I did not get the name of the solicitor for Kitchener.

Mr. Wallace: Wallace.

Mr. Chairman: Fine. Would you carry on, Mr. Wallace?

Mr. Wallace: Yes. I have these and it would make it much--

Mr. Chairman: Yes, give them to the clerk, please, and he will distribute them.

Mr. Wallace: What is before you, if I can summarize very quickly, is a brief in summary of my argument on behalf of our support of the city of Windsor's application. The last two pages are letters, one from the Waterloo County Separate School Board addressed to our licensing supervisor, and one from the Waterloo County Board of Education.

10:20 a.m.

In February we became aware of the city of Windsor's application for special legislation, and the council of the city of Kitchener had had a committee set up to study what they perceive to be a problem with the proliferation of amusement arcades. When they were aware of the city of Windsor's application, they instructed me to apply for special legislation in identical terms.

The power that we are seeking is to regulate and control video game and amusement game arcades, just as Windsor is intending to.

Because I think the issue is going to be determined at this committee as to what you do with Windsor's bill, there is no point in waiting for us to go ahead with our own special legislation, especially when it is identical. We must make full representations now and that is why I am here.

You might ask why it is necessary to get special legislation. We have found in the city of Kitchener that there is a proliferation of amusement arcades, all in the commercial areas. It is the new technology which has allowed it to happen.

In fact, I have been informed today that a purveyor of the old-fashioned pinball machines has been complaining to the city, asking why the city has not controlled the video games. The competition is knocking out the pinball machines. You cannot win, no matter what you do.

There is a lack of control as far as the cities are concerned under either the Municipal Act or the Planning Act. Subsection 232(6) of the Municipal Act provides for regulating and licensing all places of amusement.

The city of Windsor and the city of London attempted to use bylaws to regulate amusement arcades, and the city of Windsor's bylaw was specifically struck down by the county judge as being ultra vires of the municipality, notwithstanding that it purported to be authorized by the section in the Municipal Act.

The city of London met the same fate with its bylaw regarding those regulations that attempted to deal with the age of customers, the times of operation and the location and regulation to schools. As I have said in the brief, it is a genuine attempt on the part of the municipalities to cope with the problem in the existing legislation.

Under the Planning Act, some municipalities have attempted to come to grips with the problem by passing zoning bylaws to define an amusement arcade as a business requiring a special zoning, and then zoning the business out of commercial areas and into industrial areas.

I understand that the city of North York--I think Mr. Rotenberg addressed that fact the last time--has attempted to do this by shunting them all into the industrial areas.

Our problem is not the amusement arcades that are to be. It is the amusement arcades that exist now. There is an increasing density in the downtown area and in commercial areas, and the zoning bylaws will not deal with those businesses in existence. What is proposed in the zoning bylaw is really too little too late.

Dealing with Mr. Rotenberg's comments regarding the sections of the proposed legislation: if you look at clause 2(3)(a) of the bill, which deals with defining the areas, he suggested specifically that this can be taken care of in a zoning bylaw.

A zoning bylaw traditionally zones lands into broad, general categories, and it may have sub-subcategories such as different

types of residential row housing and so on, but I do not think it was ever intended that zoning bylaws should get into whether you should have a stand-up restaurant or a sit-down restaurant, or a specific kind of thing in a commercial area.

I do not think the courts like that kind of thing and I do not think it is really an effective method of controlling this kind of operation. It is just not good enough, and it was not designed for that kind of discrimination.

I use the word "discrimination," notwithstanding that a lot of people look at that word and say it is a bad word to use, but there is good and bad discrimination and I think the discrimination with regard to these machines is good to a certain extent.

With respect to clause 2(3)(b) of the city of Windsor bill, as I understood Mr. Rotenberg's argument he felt that when Bill 11 was passed, that would be the answer to all the problems, especially with respect to 2(3)(b). The general provisions of Bill 11 would take care of it.

If you examine Bill 11, you will find that when it came to regulating the hours of operation of adult entertainment parlours or body-rub parlours, they felt that they had to get into special legislation, a special case in Bill 11 dealing with that. I am saying that the same kind of special case has to be made for amusement arcades.

With respect to clause 2(3)(c), that was the regulation with respect to providing "that no person under the age of 18 years may operate or be employed in an amusement arcade." Again, Mr. Rotenberg conceded that it might have to be an amendment to the general legislation to provide for this regulation.

You only have to look at Bill 11 to see that age discrimination, prohibition of persons under the age of 18, is referred to specifically when it comes to adult entertainment parlours and body-rub parlours. Why not have similar specific regulation authority with respect to clauses 2(3)(c) and 2(3)(d) of the City of Windsor Act?

With respect to clause 2(3)(e) of the Windsor bill, which is that "no amusement arcade shall be located within such distance of a school as defined in the Education Act and as may be set out in the bylaw," again, the problem is that all the amusement arcades are already located within a convenient distance of schools, and a zoning bylaw cannot come to grips with this. That is the difficulty. They are already there.

I would suggest that the operators of these arcades know who their customers are and have zeroed in on the strategic places to have these amusement arcades. Being good businessmen, they are close to high schools and other schools.

If the specific authority were given to prohibit the operations within a certain distance of the schools, then admittedly such businesses would have to move.

With respect to clause 2(3)(f) of the city of Windsor bill, which is a licence fee, Mr. Rotenberg felt that Bill 11 would provide adequately for licence fees. However, it does not provide for a fee of any more than about \$25.

That is not so important if other regulations are provided. Certainly, nobody thinks they are going to make a lot of money on these fees, but if you had a sliding scale of fees, you could control the increase in the number of these machines in any given area and that is the method for doing that.

With respect to the regulation of the location of the business generally, it is proposed in Bill 11 that location cannot be regulated by the municipality with respect to a business other than a zoning bylaw.

Again, look at Bill 11, which makes exceptions for body-rub parlours and adult entertainment parlours. I think the main argument I am making in this whole thing is that the Legislature has obviously felt these operations to constitute enticements to adults, and that their location by regulation has been specifically provided for in the legislation.

Video games and video game arcades are enticements for children, and their location by regulation should also be specifically provided for. I think that is confirmed by the letters that are attached from the school boards.

That is my submission. Thank you.

Mr. Chairman: Thank you. If I might, I would like to clarify something that I touched on the previous time the city of Windsor was here, and which is not clear in my mind at this point.

Let us start with the idea that under the usual subdivision control bylaw there is an existing nonconforming-use concept. If you are there, you stay there. It is not retroactive, all right? It only deals with new uses that are created.

Here, we are dealing not with a zoning or a subdivision control type of bylaw, we are dealing with licensing regulation and so on. How does this bill, if passed, affect existing uses, existing amusement parlours where they are? Does it deal only with future uses, future business spots, or does it go back and deal with existing ones because it is regulating and licensing?

10:30 a.m.

Mr. Wallace: It is intended to go back and deal with existing businesses because I think that is where the problem is.

Mr. Brandt: Could I pursue that for a moment? Are you effectively saying you would, in some instances, force someone out of business as a direct result of what you are asking for here?

Mr. Wallace: It is perceived by the school boards especially, that a lot of these businesses are--bear in mind we are talking about three or more of these machines in an amusement

arcade. If there are 20 machines located too close to a school, yes, the intention is to do something about it.

Mr. Brandt: Can you think of any example of that type of thing being done by a municipality in the past? I can appreciate there are instances where you might have some difficulties with existing businesses. Do you not find it somewhat irregular and perhaps a little strong to attempt to do it in the way you are suggesting? Effectively, you would legislate someone right out of business.

Mr. Wallace: I think it is strong. It is history repeating itself. You will find pinball machines in the 1930s got to such a state--and I think there is a possibility of that happening again--that they were put in the Criminal Code.

In that connection, if you happened to listen to the Canadian Broadcasting Corp., CBL, on May 17 on the Joe Coté show, Mr. Lastman was interviewed in front of a parlour called Video Invasion in the city of North York. He was asked about the zoning bylaw and how it could affect this and he said: "Obviously this is in contravention. I will have to have my bylaw enforcement officers out here to do something about it."

When they interviewed the owner of the Video Invasion operation, they asked, "How are you going to control children in here during school hours?" He said: "That is simple. We will not exchange the tokens for their money, so they cannot operate the machines with the token." I say, "Shades of the 1930s," because that is just what happened with the pinball machines.

If you recall, the slugs were issued for the operation of the pinball machines and later on the police had all sorts of problems with gaming, because the slugs were issued and returned for the operation of the machine. It can lead to that sort of thing. I am saying there is a temptation there and obviously when he mentioned slugs, it is like the 1930s again. I say history is repeating itself on a high tech level.

Mr. Brandt: If this were to pass, how many businesses would be affected immediately in your municipality?

Mr. Wallace: I would say in the last couple of months we have had another five arcades open up on the main street that I am aware of. Mrs. Ashley, our licensing supervisor, is here. I do not know if she has any idea how many machines there are. Do you have any idea of the machines?

Mrs. Ashley: Where?

Mr. Wallace: In total in the whole town.

Mrs. Ashley: There are about 500 machines at present.

Mr. Wallace: Five hundred machines in the city.

Mr. Brandt: Presumably there would be some establishments

that would not be in violation of the intent of what you have laid out here.

Mr. Wallace: That is correct--

Mr. Brandt: What I am asking is how many of them would fall into the area where they would be in a prohibited area, or against the bylaws as you envisage them?

Mr. Wallace: I think we are talking about the main street and the proximity to some of the schools there. It is only a guess; I cannot really tell you how many would be affected. We are talking about three or more so we are talking about things other than variety stores. We are talking about actual arcades.

I do not think I can say other than I think there has been about five open up in the last while on the main street, and there was already at least that many.

Mr. Rotenberg: You raised the point that if this act were passed, would it cover existing uses and put existing uses out of business. Under subsection 110(7) of the Municipal Act, "Notwithstanding subsection 6, a board of commissioners of police or a council shall not refuse to grant a licence in respect to the carrying on of any business by reason only of location of such business where such business was being carried on at such location at the time of the coming into force of the bylaw requiring such licence."

Under the Municipal Act there is also some protection as in the Planning Act for legal nonconformity. If Windsor's request is granted, those which are now in existence under that section of the Municipal Act would not be able to increase their licence simply on the location matter.

Mr. Chairman: Carrying that a little further, that is under a location matter. Will it still be "retroactive" so far as other matters contained in such bylaw would be?

Mr. Rotenberg: If such bylaws as general legislation allowed for regulation of hours or age, that would be retroactive; it could be enforced in existing uses.

Mr. Swart: Now that the question has been raised, I would just like to ask Mr. Wallace to comment on that. We could propose an amendment to this act, say, irrespective of section so-and-so of the Municipal Act, to cover that.

Have you dealt with that section of the Municipal Act in your consideration of this? I realize that you are from Kitchener and the bill is from Windsor, but you have apparently co-operated and gone into this in some depth.

Mr. Wallace: Certainly, we are looking at this special act as to a certain extent overriding the provisions in the Municipal Act.

It may be that if there is enough concern the Legislature

might consider amending the general legislation. I think that these provisions could get at existing businesses where the problem was perceived. Notwithstanding that section--

Mr. Swart: Not being a solicitor, I cannot say whether this would supersede; often, one act passed after another act does supersede it. Perhaps the solicitor for Windsor--and I think all of us would want to know this--will have some comments on this.

If there is an amendment needed, we can have it today. Would you like to comment on this?

Mr. Chairman: It is relative to the issue raised by Mr. Rotenberg, where it appears under the Municipal Act to state that you could not refuse a licence to an existing establishment or an existing amusement centre.

Have you considered that matter and dealt with it in your bill or should we have an amendment here to assure that, if this bill is passed, it would not be thrown out because the Municipal Act prohibits retroactivity?

Mr. Kellerman: I look at this bill as setting a complete system of jurisprudence for the regulation of this particular activity. The powers are found in this bill, and if any of them conflict with the general provisions of the Municipal Act, private legislation would govern.

I see that if approved in the form the bill appears before you, there is no need for any further amendments to this bill. It constitutes a complete code in itself.

Mr. Swart: There are also one or two other items I would like to mention. I want to offer an apology for David Cooke, who wanted to be here today when the Windsor bill is being dealt with. He is on a budget task force and unable to be here today.

It seems to me that there is a very real principle here. This is the authority that, because of special circumstances, we want to give the municipalities: the power to regulate their own community and the conditions in their community which they feel very adversely affect the operation of the schools in the community, and the community in general.

I feel that this authority should be given to the municipalities. I know there is always some danger in retroactivity; we have to find the balance and the right way to find that balance is to have a pilot project in two, three or four cities rather than passing the general legislation at the present time.

I am in support of this bill from the city of Windsor. I did want to ask Mr. Wallace if there is not another very real problem with regard to zoning bylaws. One is the length of time it takes to get a zoning bylaw processed; normally it is from the time they start considering it and public meetings, and so on. You are very often talking about a year by the time it gets through the municipal board. Is that not correct?

10:40 a.m.

That is a very real disadvantage, too. It does not seem to be done much more quickly.

Mr. Wallace: The situation is that there is the legal problem, the time it takes and the possibilities of people saying, "We do not want that in our area." If you are going to "ghettoize" this kind of use, you will have people objecting and you could possibly have a hearing.

In addition, that does not get at the problem of those things that have already gone into the commercial areas in a big way. You still have very real problems as far as the schools are concerned, as they see what is happening.

Mr. Swart: Is it not a real difficulty, as you already alluded to, in perhaps even getting the zoning bylaw, because this is a very fine definition in a zoning bylaw? In effect, you would be doing spot zoning, which sometimes does not meet with favour from the Ontario Municipal Board.

Mr. Wallace: Yes.

Mr. Swart: The question is, would you anticipate that there might be some difficulty in dealing with this under the present zoning legislation?

Mr. Wallace: Yes, I do. The problem with that, too, is that generally you can go into broad categories of uses, but to talk about one or two or 10 machines within a general commercial category, I can see the courts taking a dim view of that in an existing law, because they do not normally get into the distinctions between, say, different kinds of restaurants and so on.

Mr. Swart: In your view, is it fair to say that the only effective way of dealing with this matter, if it should be dealt with and should be dealt with retroactively, is through this kind of legislation?

Mr. Wallace: Yes, it is what is being perceived here. It has already also been perceived so in the United States, and has created some social problems. Just as the body-rub parlours, the adult entertainment parlours, were singled out for special treatment, these operations have to be, too.

Mr. Chairman: Gentlemen, we did reach some kind of understanding to make this very quick and to let Mr. Crane get on. Could we keep it as brief as we can?

Mr. Stevenson: To any or all of the city solicitors, I wonder if you have any idea of how these businesses were established. Are they all private operations where people have put their own money into them? Are they syndicated or a percentage of each?

Mr. Kellerman: If I may, Mr. Chairman, my understanding is that these machines are leased. The operator will lease the premises

and, in turn, will lease the machines. A percentage of the receipts is divided between the owner of the machines and the operator. It is my understanding that very few of them are owned at all by the operators.

Mr. Renwick: My question is addressed to any of the solicitors who want to answer it. I am having a little difficulty with the fundamental question of the evil you are trying to deal with.

Mr. Wallace: Mr. Cosman says he has a quick list right here.

Mr. Cosman: I have a brief list of the kinds of social problems that have been identified in our community and through the Waterloo Regional Police Department, which regulates both Cambridge and the city of Kitchener.

The problems described to me basically involve those of school-age children, ages 10 to 16: their absence from school and use of lunch time to play the pinball and video games, particularly if the machines in the arcades are located within walking distance of a school.

There is some evidence of children stealing to finance game playing and some evidence of children spending a substantial amount of money. The police officer who spoke to me indicated there was one case of a child spending \$100 in a single day. It may well have been his own savings, but there is still evidence of that kind of money being spent.

The courts in our region have recognized the problem and family courts have made orders that children stay away from pinball arcades. I think the courts regard them as a source of difficulties.

The school boards expressed concerns, particularly with respect to truancy. That is my brief list, Mr. Chairman.

Mr. Renwick: The single theme running through all of your comments is related to children.

Mr. Cosman: Largely, sir, yes.

Mr. Renwick: Apart from the provision of the bylaw which deals with the location within a distance of a school--when I asked last week, somebody said a quarter of a mile was the distance proposed, or some such distance--how will the passage of this bylaw deal with any of your other concerns with respect to children?

Mr. Cosman: The Windsor legislation addresses the problems of the age of operators and the age of persons under 16 years entering or remaining on the premises without a parent or guardian. There is going to be some responsibility on a parent or guardian.

Mr. Renwick: Leaving aside the question of children, is there any other evil that is concerning you?

Mr. Cosman: I do not know if the concerns expressed to me

are broad enough to indicate criminal activity by others to finance playing, but that is the one the police have expressed to me.

Mr. Kellerman: Also, one of the concerns was that this type of activity on an old type of strip commercial street does tend to attract groups of people who congregate outside the operation and interfere with passers-by.

It does, ultimately or apparently, take on the characteristics of a hangout for young men or for many young people. There have been complaints about interference with the activity in the neighbourhood and the noise going on at night from people who have to live over and behind the stores on the old strip-commercial streets.

Mr. Mitchell: It is more by way of a scenario than a question, but I was very involved in my own municipality some years back with regard to this same problem.

If I may, I will refer to one of the problems raised. Shortly after I began to express my concern about the arcades, I had a parent call to to ask: "What is the problem? It is an amusement place for my youngster."

I said, "I am going to give you my own particular point of view," which I did, one of them being that the youngsters instead of using their money for lunches at school would wind up using their money to play in the arcade.

I will not get into the fact of what our municipality did, because the zoning bylaw was frankly ineffective to deal with the problem. We did work it through the licensing angle.

However, a few weeks after a particular operation opened up, that same parent who had expressed some exception to the position I had taken called to tell me she had begun to notice money missing from her purse and found out that the money was being used to play in the arcade.

I am not suggesting that is the case with all, but for the most part, all the members here live in Toronto and within the area surrounding the Legislature. I think one only needs to walk some of the streets here to see what does take place at some of the arcades, and some of the problems.

By way of support, there are good operations and there are bad operations. Unfortunately, to a great degree we only see the bad ones, but that is my own personal experience of what we have been seeing.

Mr. Chairman: If I could just slightly reiterate something from two or three weeks ago, with regard to subsection 2(3) of the act, I understood the parliamentary assistant to say that the government's general legislation coming up has provision in it for clauses 2(3)(b), (c), (d), and (f).

Am I correct regarding those, that clauses 2(3)(a) and (e) were not dealt with in the upcoming general legislation?

10:50 a.m.

Mr. Rotenberg: No, Mr. Chairman.

Mr. Chairman: Would you clarify please?

Mr. Rotenberg: I was going to discuss this later when it was time to give opinions but you have asked the question. What I said there--I will discuss it more with you--was that clause (a) can be covered under the Planning Act. We were considering adding legislation at the request of Metropolitan Toronto to allow them to prohibit school children from being there in school hours. We were considering adding that in the general legislation. There is no commitment as yet from the government. That is what we are considering.

Clause (c) would not be covered, clause (d) would partially be covered, clause (e), as I indicated before, could be covered under the Planning Act and clause (f) is covered partially under section 11 because you can have licensing for the arcades. I do not think this is the appropriate time to get into the details because after you hear all the deputations you will hear from the members of the committee and from myself.

Mr. Chairman: Thank you. There being no further questions of Mr. Wallace, might we hear any additional comments Mr. Cosman has.

Mr. Cosman: Mr. Chairman, the city of Cambridge became aware of the application for private legislation by the city of Windsor and that pending of Kitchener. Our council considered the social problems in the community and made a decision to instruct me to seek identical private legislation. It was my feeling that I might best serve the municipality by appearing here, expressing these concerns, without bringing our application for legislation yet and perhaps wait for the results of this hearing.

On the merits, I think Mr. Wallace has covered them. However, I will be glad to answer any questions of the committee. Those are my remarks.

Mr. Chairman: Thank you. One thing if I might: perhaps, for the edification of the members, could we have an identification in the room of how many other municipalities are present with observers. I know the city of Woodstock is here, being dear to my heart. Are there any other municipalities here not yet identified?

Mr. Elston: Can I be granted a special audience by the chairman?

Mr. Chairman: Yes, certainly.

No? Fine, then the city of Woodstock is the only other. Are there any other questions of Mr. Cosman?

Mr. Elston: I have one. We have heard from the parliamentary assistant with respect to some consideration by the ministry now for general legislation, but no commitment. With respect to timing, now critical is the problem? This would go as

well for Windsor and Kitchener as it would to Cambridge. How critical is the problem as perceived by your various municipalities?

Mr. Cosman: I think there would be two considerations: First, there is the expanding number of pinball arcades in the community. If they are going to be afforded some form of legal nonconforming protection and the legislation is on its way, if I were a businessman in the field I would want to establish as many arcades as I could to give them that protected status.

Quite frankly, I am not aware of the private operator's position in our community as to whether that would happen or not. But that is one of the dangers we would face.

There may well only be a market for 12 arcades in Cambridge. If all 12 are established before the legislation is passed, it is of little help to us.

The second problem is with respect to the social evils. I think the school boards would like to see them eliminated immediately or if not eliminated, certainly restricted immediately. What is the social cost of those problems? How many more children are going to "misspend" some time before the legislation is passed? That is a judgement for you to make.

Mr. Wallace: Can I just comment on that? Right now the operators and people interested in leasing these machines are opening as many as they can, as fast as they can, because of the general publicity going on in the United States. The other night I received from a council member an article from the Boston Globe about the problems they are having there.

This is an article from the Planners' Association in the United States about all the problems they are having throughout the United States. I think the operators and the lessors are seeing the handwriting on the wall. The handwriting on the wall says things have to be regulated somehow, because of the fascination of these machines for the younger generation, and also for the older generation, I might add.

Mr. Elston: Any feeling of time about the city of Windsor?

Mr. Kellerman: Time with respect to--

Mr. Elston: What we are hearing is that the government is considering some legislation. As is the case, consideration of legislation can go on for several weeks, days, months or even years. What I am wondering is, how many spots are we looking at that could be filled up? How many might you have and are you scared that if this bill is not passed you will be prevented, really, from regulating this industry?

Mr. Kellerman: This, of course, is a current concern, Mr. Chairman, and the application is for passage of this bill at this time. General legislation to cover this matter may take weeks, months or years. In order to control the problem, legislation is required at this time. There are a number of operators that have come and gone from the city of Windsor. Were this act to be passed

at this time, it would prevent the commencement of additional operations within the city.

Mr. Chairman: Are there any other questions of either Mr. Cosman or the other solicitors? Thank you very much, Mr. Cosman. Perhaps you three solicitors, supporting, if I may say, might leave your chairs to let Mr. Crane have some room for some of his people who may want to answer some questions.

Mr. Crane: Thank you, Mr. Chairman. I have five witnesses. Perhaps Steve Perrault, Mr. Masse, Mr. Chudyk and Mrs. Currie could come up. I think we only have two chairs, so maybe two of them could come, Mr. Chairman.

Mr. Chairman: That is fine, thank you. If they are going to answer questions with the committee, they can change around in and out of those chairs, if you will.

Mr. Renwick: There is an extra chair here.

Mr. Chairman: There is a microphone over at the end if need be.

Mr. Crane: Mr. Chairman, may it please you and members of the justice committee, I appear on behalf of the Windsor Amusement Association. I want to make a very brief opening statement. I have submitted to you a brief and have given a copy to my friends. That was delivered to you two or three days ago. I now know why I like appellate practice; the facts do not change. When you appear here you never know what you are meeting.

We started to deal with the Windsor bill and then we forgot about Windsor and we dealt with Kitchener. I would hate to be here when Kitchener's bill is really before you because I would never get called. However--

Mr. Chairman: We might discuss Windsor then.

Mr. Elston: Sometimes the principles remain the same, a common thread perhaps.

Mr. Kellerman: But not the facts.

Mr. Elston: I do not want to debate with you, Mr. Kellerman.

Mr. Renwick: You have to understand how we operate here.

Mr. Swart: You have to come very frequently.

Mr. Rotenberg: You have been here for how many years and you still do not understand it.

Mr. Crane: In any event with all due respect, a lot of the submissions made by Mr. Wallace and some of them made by my learned friend Mr. Cosman, are not supported by any evidence. They are the old scare tactics that the kids are stealing money from their mothers' purses to play pinball.

A few years ago when I was growing up, the bad boys were alleged to be garden raiding and stealing hub caps. Now I have four boys and I do not have trouble with them. They are going to school and playing ball and hockey. I think we should deal with this application on the evidence, not on what someone told the learned solicitor that they heard happened in Boston, or some other place, unless there is some evidence to support it.

Regardless of the fact this is a legislative committee, we surely must be dealing with evidence and not with a motion and not with something not based on fact. I would ask you to at least deal with it from that point of view.

With that brief opening, I would like to call Mr. Perrault please. Perhaps you could tell the committee your full name and address and occupation and what you do in Windsor, please.

Mr. Perrault: My name is Steve Perrault. I live in a town outside Windsor called Kingsville. I operate a company known as Vending Unlimited Inc. We are suppliers and operators of amusement games in the city of Windsor.

We have been operating in the city since 1975. We supply games to the city of Windsor, the outlying communities, Chatham and London. I am also a spokesperson for the Windsor Amusement Association. The other operators that practice a similar business and I have banded together to deal with the problems we are faced with here today.

11 a.m.

On different occasions, we have met with the objections of the city concerning the proposed bylaws it has brought before us. Today we are here to answer any questions you might have with regard to any of these problems.

Mr. Crane: Mr. Perrault, perhaps I could ask you a few questions. Can you tell the members of this committee how many people you employ directly and indirectly?

Mr. Parrault: At this point we employ in our own company 30 people directly and 70 indirectly.

Mr. Crane: Have you had personal knowledge of any particular problems with your companies or your outlets? You have seen the flavour of the meeting from the questions asked: the children missing school, stealing money from their mothers' purses, and all those evil things. Have you experienced--

Mr. Elston: I would be surprised if the answer is yes.

Mr. Crane: Do you want to handle my brief?

Mr. Elston: I can understand what you are suggesting, but unless he is in the house with these children, I doubt very much that he is going to see it.

Mr. Crane: The issue was raised and I want to deal with

it. If it was nere, it apparently had some validity; it was not snot down when the other side mentioned it. So please give me the courtesy of dealing with it.

Mr. Perrault: We have had no direct complaints of parents saying they have had their children stealing from their purses, or that they have been out doing whatever to get money to do this. However, I could also say I have had, in my own home, and homes of friends, parents complain about children stealing to buy bubble-gum cards because they like to collect the pictures of hockey players and this type of thing.

Mr. Crane: In the past, have you met with either Mr. Kellerman or the city fathers in Windsor, the aldermen, prior to this private member's bill? Have you had occasion to meet with them, write to them or make any suggestions to them as to how this problem, if there is one, can be controlled?

Mr. Perrault: Yes, we have. We met with them on different occasions and we had suggested that a committee be formed. You will find that point in this brief on page 27. We wrote them a letter on November 27, 1978, suggesting we would put together a committee to deal with the problems that would arise in the city.

Mr. Crane: The letter, Mr. Chairman, is on page 27.

Mr. Perrault: We suggested this committee comprise not more than six people, made up of three representatives from the industry, an appointee named by the chief of police, and two appointees named by the city council.

The action of this committee was to deal with any problems that might come up in the city. However, as you can see by this, there was no response at the time. We wrote again to the city on July 8, suggesting--

Mr. Crane: That is two years later. Go a little slower.

Mr. Perrault: There was an interim period of two years. There was a bylaw put into effect--

Mr. Crane: Was it before the courts? Is that the reason for the gap?

Mr. Perrault: There was a court case in which the city's bylaw was struck down in the interim period, after which we suggested the committee be formed again to which we would appoint--

Mr. Crane: That is the letter of July 8?

Mr. Perrault: That is right, and that letter, I believe, is on page 30.

Mr. Crane: Mr. Chairman, for the assistance of the committee, it is on pages 29 and 30, and the city's reply is on pages 31 and 32. For the record, the reply is, "The city does not wish to participate as a member of a local amusement arcade policing committee, as the committee would not have any legal authority to

ct where situations arise which require correction; and further, the administration be instructed to monitor the activity of the local amusement arcade industry and to report to council."

Then, Mr. Perrault, could you deal with what happened after that? Is there anything you would like to comment on about Windsor?

Mr. Perrault: What has probably brought us here today was a situation that developed in an area called Fontenbleu. It is primarily a residential area with a small strip plaza. An operator opened up a game room next to a variety store. It was in fair proximity to some schools and a church. There were, I understand, a few complaints with regard to its location.

We, as an association of operators, went to the operator running that location and suggested this was not the best place for a game room because of the proximity to schools and so on. He then closed it down.

Mr. Chairman: Mr. Swart has a question.

Mr. Swart: You can go ahead and finish your examination, Mr. Crane.

Mr. Crane: Are you, then, familiar with any other complaints? Incidentally, when I prepared the brief on page 7, I did not have Mr. Paroian's file. I was under the impression there were two complaints. I believe there were five complaints, if I can add right, and you can find those in Mr. Paroian's letter on page 28. I wanted to be scrupulously correct.

On page 28, assuming that I can add and I know the locations, they are at located at Dougall and Cabana; Mill Street, I take it, is number 2; Wyandotte Street is number 3; and two locations on Walker Road add up to numbers 4 and 5. Mr. Perrault, do you remember there were five complaints, as opposed to the two I mentioned on page 7?

Mr. Perrault: Yes, that is right. I would also like to add that all five of those places are no longer there.

Mr. Crane: Also, since one of the members of the committee, Mr. Elston, is worried about the timing, how long ago did these complaints occur? It is now June 9, 1982. Do you remember when these complaints that led to this private bill arose?

Mr. Perrault: Actually, four of them would have been in 1978. I believe the fifth one was some time last year, in 1981.

Mr. Crane: Are you aware of any in 1982?

Mr. Perrault: No.

Mr. Crane: After Mr. Paroian wrote his letter for you in July 1980, and the city wrote back--that is on pages 30 to 32--I would draw the committee's attention to the recommendation, the last words on page 32, "In the event conditions warrant such action"--they are talking about private legislation.

Mr. Perrault, is there anything else you wanted to tell the committee about your operation, the Windsor operation? Maybe I can lead you a little bit. Do you operate anywhere else other than in Windsor?

Mr. Perrault: Yes, as I mentioned earlier, we operate in London and Chatham as well.

Mr. Crane: Have you incurred any problems in those communities?

Mr. Perrault: No. In London, we do not operate any actual arcade rooms per se. It is in conjunction with other amusement centres.

Mr. Crane: Do you live just outside Windsor?

Mr. Perrault: Yes.

Mr. Crane: Do you read the papers and listen to the radio stations down there?

Mr. Perrault: Of course.

Mr. Crane: Is there any groundswell support? Are people demonstrating as they are outside Queen's Park: "Bring in the private legislation. Stamp out pinballs and video machines"? Can you tell the committee what the feeling is, to your knowledge at least, in the media and the papers and with your ear to the ground?

Mr. Perrault: In recent times there has not been any real upsurge of people upset with us. I think we have done a very good job in keeping our area clean and operating properly. I do not think there is anyone objecting to our operating with them, especially in the spirit in which we operate, which is one of trying to complement the city.

11:10 a.m.

Mr. Crane: Lastly, Mr. Perrault, would you be prepared--assuming that this committee recommended it or at least considered it--to have a form of licensing similar to that adopted in the Liquor Licence Act, where you are perhaps given a warning or invited in to show why your licence should not be lifted if you are serving people under a certain age, so to speak?

Is that something that your association would be prepared to work with, in addition to your recommendation of the committee?

Mr. Perrault: Providing that our industry had some kind of input into that type of regulating situation, we would be agreeable to it.

Mr. Crane: Looking at the clock, and the number of people who want to speak, is there anything that we have overlooked, or there anything that you want to say?

Mr. Perrault: Not at this time.

Mr. Swart: I have two or three questions, and two rather general ones first. It was mentioned not so much for you as for Mr. Crane, although I think he did bring out a question from you that we should be dealing with hard evidence. What evidence is there?

Will you not consider the fact that we have a letter here from the school board of Waterloo, in fact, both school boards? In it, the public school board states that "a report from our principals indicates that currently the major problem relating to the arcades is the late attendance at school of students who frequent them." Then it goes on to make some comments about potential problems.

Also, when we have had the police themselves approach municipalities and municipal councils relative to the operations, do you not think that there is some reason, in view of the fact that you have done this on your own, to regulate the locations of these arcades?

Mr. Crane: Mr. Swart, perhaps I can answer that first for you. It has always been my position--

Mr. Swart: I was asking the question of your witness.

Mr. Crane: Okay, fine. I would like to respond to it too.

Mr. Perrault: With regard to evidence that was presented here, there was a comment made about a child. I think this was a police report--correct me if I am wrong--and I believe it said that a child had gotten his hands on \$100 and spent it in the arcade--

Mr. Swart: I was not referring to that one. I was referring to the letter from the boards of education which indicate there is a problem with truancy.

Mr. Perrault: With respect to that, in one of the townships or towns in which I operate a game room--this just happened on Monday, I believe--we had a man who was in the position of looking for truants. He came into the game centre and made a comment to me that in past times he had come in to look for truant children. He had noticed in the last while that whenever he had come in and school-age children were there, they had been legitimately out of school.

In other words, it had been a professional development day, or they had been on some type of lunch hour or break.

Mr. Swart: You decided that certain arcades should be moved or closed down because of complaints. Doesn't that indicate that there should be some regulation? You are suggesting self-regulation by the industry, but does it not indicate that there should be some regulation about the location?

Mr. Perrault: The problem; when you allow regulation, is that, just as you have good restaurants and bad ones, you cannot close down the good ones because of one bad one.

Mr. Swart: I think you are going to have to be specific,

yes or no. Should there be some regulation, either self-regulation or regulation by a municipality or some force? Should there not be some regulation about the location of these arcades?

Mr. Perrault: I could not argue against self-regulation.

Mr. Swart: So you think there should be some self-regulation. Would you not then think that perhaps it would be more favourable and more fair to have that by the community rather than by a vested interest?

Mr. Perrault: We were suggesting in this proposal to our municipality that it be made up as long as the industry has input, and this is what we were suggesting: that we would meet with members of council, clergymen and some of our own people.

Mr. Swart: Yes, but you were not suggesting that the municipality should have the regulatory authority. You are suggesting that they would only have recommendations to you. Are you suggesting that municipalities should have regulatory authority if you people have some involvement and some input to that municipality?

Mr. Crane: Mr. Swart, I think I should answer this because you are getting into a legal question, with respect. I could have answered your question five minutes ago if you had let me.

Mr. Chairman: Mr. Crane, this is not a court and it often breaks down, very unlike a court. I am afraid the witness is here, and it is fair enough for Mr. Swart to ask that witness what questions he wishes to ask.

Mr. Crane: I am trying to help him; I am not trying to prevent him. He can ask him the same question as many times as he wants. I have an answer for him. I am trying to give him the answer. If he does not want it, okay.

Mr. Chairman: Perhaps he wants to see the demeanour of the witness. You are familiar with the expression? Mr. Swart, carry on.

Mr. Swart: I just want to pursue that question further. If there is to be regulation, if there are undesirable locations for these arcades--and you have admitted that--is it not preferable to have an independent authority like the community making the determination, rather than the industry itself which obviously has a vested interest?

Mr. Perrault: In this circumstance I would have to take a position of saying, because of the regulations that they are proposing, I would have to say no.

Mr. Swart: You are saying that the municipality should have no place in this, of being able to regulate this industry. Is that what you are saying, that it should only be done by the industry itself? I am talking about location.

Mr. Perrault: I could not say that they should have no place in regulating-- The whole thing comes back to how they are

going to regulate it. The regulations that we have seen have been prohibitive.

Mr. Swart: You are saying that perhaps the municipality should have some regulatory authority.

Mr. Perrault: Yes. We are not saying that we do not want any type of regulatory action at all, as long as it is amiable.

Mr. Swart: You do not disagree that the municipality should have some regulatory power with regard to the location of the arcade.

Mr. Perrault: On page 13 of our brief, item 28--

Mr. Crane: It deals with your question. That is what I have been trying to say, Mr. Chairman.

Page 13, paragraph 28. Mr. Chairman, when Mr. Swart is finished, I would like to say something on that point so that we do not forget it, please.

Mr. Chairman: Yes, that is correct. Mr. Elston wants to take a supplementary. Are you through, Mr. Swart?

Mr. Swart: Yes, I will give way to Mr. Elston on a supplementary. I do want to go back to an entirely different area, though, to question this witness.

Mr. Elston: I take it that you are more into having a committee in which you have basically a self-regulatory situation with input through the community.

Mr. Perrault: Right.

Mr. Elston: My question to you is this. If there is an operator, or if the operator you told us about refused to close down his location, what sort of influence would you have to close it if you thought it was not a desirable location, as an association? What could you do to regulate it if he said no?

Mr. Perrault: All the operators in Windsor are members of the association and we have a regular type of meeting schedule at which time these matters are brought up to view. You have to appreciate that when we are considered operators, the operators who are part of the association are not necessarily the people who are actually operating the game rooms. We are the owners and suppliers of the equipment. If there is a location that is not up to standards, it is not all that--

11:20 a.m.

Mr. Elston: You withdraw your machines?

Mr. Perrault: You can withdraw the machines and they could be located elsewhere. It is not as much--

Mr. Elston: Now the one question advanced earlier was

whether this piece of legislation was going to destroy privately laid out funds. My question comes back to you. How many locations do you franchise out in the city of Windsor, for instance?

Mr. Perrault: How many arcades are there in the city of Windsor?

Mr. Elston: No, how many sites do you supply with equipment?

Mr. Perrault: My company probably supplies 150 sites, but there are only two arcades in the city of Windsor.

Mr. Elston: Just a minute here. You mean you have 150 machines there?

Mr. Perrault: No, we have 150 sites or locations. In a lot of cases, it could be a ma and pa store with one or two machines. It may be a bar, a restaurant, a tavern or a roller rink.

Mr. Elston: So the individual operator conforms to the guidelines you, as the distributor of this equipment, set down? Is that fair to say at this moment?

Mr. Perrault: I am sorry, what is that?

Mr. Elston: Anybody who wants to have one of your pieces of equipment must conform to the guidelines you establish?

Mr. Perrault: That is correct.

Mr. Elston: If a school board or a council had come to you and said we do not want you having an arcade within a mile of a school, would you as the supplier say, "Okay, we will take it out of that area because it is of concern"?

Mr. Perrault: If there was just cause in that particular circumstance. If you were to take a city map--and I think you could do this with any city--and you started drawing a circle of a mile radius around every school, you would not have any city left. This is one of the areas that--

Mr. Elston: I just used that as an example. I think the example was maybe a quarter mile. I am not sure.

The concern I have is that you do talk about self-regulation through your association. You, as one individual may be very responsible, but if I, in looking to undercut your territory decided to put an arcade two or three blocks closer to a prime source of players, how are you going to get me to agree with you that it is an undesirable location from a business point of view?

Mr. Perrault: If you are a supplier of game machines--

Mr. Elston: I do not have to become a member of the association. What is to require me to become a member of your association? It is a voluntary association.

Mr. Perrault: It is a voluntary association. I guess the underlying thing is we have invested a lot of money in a game machine location. From a business standpoint, it is difficult to imagine them wanting to invest that type of money without some responsibility.

Mr. Elston: Do you, in the locations, invest the money to set up the gaming area?

Mr. Perrault: We have the equipment and the individual game room operator would be responsible for the building and renovations and so on. It can add up to a fair amount of money.

Mr. Swart: On a point of order, this may be getting a bit away from--

Mr. Crane: I wanted a chance to deal with Mr. Swart's question and then Mr. Elston's question. I was up here five years ago before this committee. Then it was the Metropolitan Amusement Association, and our position was then, and I do not think Windsor Amusement Association's is different, that we had no objection to having some form of control a thousand yards from a school or a thousand feet or something realistic. We also saw nothing wrong with some form of control of keeping children out during school hours, so I was trying desperately to answer your question a long time ago.

We are not suggesting you or the Legislature do not have a role. We are only saying that in this case we tried to work with Windsor pending some province-wide legislation and Windsor jumped the gun and came here with a private bill. We say this is pretty extreme. You do not come to Queen's Park every time there is a problem to try to get a private bill. It is like killing a fly with a sledgehammer.

Now dealing with Mr. Elston's question--

Mr. Elston: Did they not start with court cases and bylaws in 1978?

Mr. Crane: One case.

Mr. Elston: Dealing with a bylaw though is a major piece of undertaking by an individual municipality. I do not want to disagree with you too much at length here, but there has been some considerable effort somewhere--

Mr. Crane: With respect, I do not want to argue the case with you either, but there was a two-year gap and the letter said, in essence, they were stonewalled. They said we do not want to work. I do not know why Windsor did not attempt to do it.

If you put Mr. Kellerman on the stand, he would probably admit there have not been any recent problems. We are dealing with an historic problem. If we are dealing with an historic problem, maybe the committee is not the right approach. But I do not think, with respect, that private legislation with all of these extreme remedies is the correct approach either.

Mr. Swart: I am not sure I agree with your opinion that Windsor jumped the gun. They perceived a real problem. They did not know of any general legislation that was going to be passed to deal with the problem. So they took the legitimate route as they saw it to try to deal with the problem. I do not think jumping the gun--

Mr. Crane: I am dealing with what the solicitor tells me; that it is historic. Those are the facts, sir. I do not think we have heard any evidence of anything in 1982 that--

Mr. Swart: That is your opinion, not necessarily the facts.

Mr. Crane: It is what the solicitor told me and presumably he gave me the facts. Dealing with Mr. Elston's one question on page 8 of our brief, you wanted to know how it could be self-policing in the interval.

At the bottom of page 8 they say the three companies own 70 per cent of the machines. We make a statement that it would be an easy matter for the city to get together with a very large segment of them. I agree that you put your finger on a problem if someone is not in the association, but do we need to pass private legislation to deal with an imagined or a possible risk?

Mr. Swart: Mr. Chairman, perhaps I can complete my questions in one other area and then I will not go any further than that because there are other people. I wanted to find out, because of the retroactive nature of the bill, what the costs are for an operator to open up an arcade or to put in one machine or two or three machines?

I guess the first thing I would like to ask you is do you know of any operators who have purchased buildings or built buildings for an operation, or do they just rent an existing building? Is that the general pattern?

Mr. Perrault: You have asked several questions in one there.

Mr. Swart: There will be several more. Would you pursue with those that I have asked?

Mr. Perrault: Dealing with the last one, have operators bought their own buildings to operate game machine locations, the answer is yes.

Mr. Swart: Do you know of any near schools?

Mr. Perrault: Where they have bought buildings near schools?

Mr. Swart: Yes.

Mr. Perrault: No.

Mr. Swart: I presume the majority are rented though?

Mr. Perrault: Again, you have to understand, there are only two arcades in the city of Windsor.

Mr. Swart: Yes, but I am talking about the buildings which have another operation and they add some machines. I presume that is the usual type of operation, is that right?

Mr. Perrault: That is often the case, yes.

Mr. Swart: How much does it cost them to get into the operation, capital investment?

Mr. Perrault: Whom are you speaking of now, the supplier of the games or the operators?

Mr. Swart: I am talking about the operators.

Mr. Perrault: How many machines are we speaking of?

Mr. Swart: Per machine.

Mr. Perrault: Possibly \$4,000.

Mr. Swart: The operator has to pay that as a capital payment per machine?

Mr. Perrault: That the supplier of the machine would have to--

Mr. Swart: You are talking about the supplier of the machine. I am talking about the operator who is operating the machine. If he wants a couple of machines in his operation, how much does it cost him in capital to get those machines put in?

Mr. Perrault: It is usually a lease-type operation.

11:30 a.m.

Mr. Swart: A lease-type. So it costs them nothing.

Mr. Perrault: It is sometimes a percentage of renovations, whatever else has to be done to a particular building to--

Mr. Swart: But it is a negligible cost to get a machine or two put in.

Mr. Perrault: To get a machine or two, the cost would be negligible.

Mr. Swart: Two machines, or three machines, whatever he wants.

Mr. Perrault: To set up an arcade, the cost would be--

Mr. Swart: I am not talking about the total arcade. You said you only have two in Windsor. I am talking about the person who is operating a business and wants to get one, two or three machines put into the business he is operating.

Mr. Perrault: In those circumstances, the cost would be negligible.

Mr. Swart: The cost would be negligible. Thank you.

Mr. Breithaupt: I would like to continue, Mr. Chairman, to get some general information as to the size of this operation.

It seems to me that we may eventually wind up with a complete government monopoly, and perhaps we will see these machines in all the liquor stores around the province, because the money that certainly goes into them might well pay off the provincial deficit, you never know.

Just as liquor was eventually taken over, I expect that these machines may some day be taken over by this government as well.

I would like to get some background--

Mr. Rotenberg: Is that part of your party platform?

Mr. Breithaupt: It would be grabbed by you if it were, so I do not want to make any commitment at this point. I would like to get a little better understanding of the local situation, the amounts of machines involved and the costs involved.

As I understand it, you service about 150 locations--

Mr. Perrault: Correct.

Mr. Breithaupt: --mainly in Windsor, but also in London and Chatham.

Mr. Perrault: Yes, sir.

Mr. Breithaupt: How many locations in Windsor?

Mr. Perrault: I would give an estimate of about 50.

Mr. Breithaupt: How many machines are in those locations, in total?

Mr. Perrault: Are you speaking only of my particular circumstance?

Mr. Breithaupt: Yes.

Mr. Perrault: I would guess somewhere in the neighbourhood of 250 to 300.

Mr. Breithaupt: So that in a tavern, or in a mom and pop store, as we call them, there might be a machine or two. In the ordinary circumstance these are leased. There is an arrangement, no doubt, that you receive a certain portion of the total receipts under the terms of whatever your leasing arrangement is. You service the machine, you change it on occasion, whatever has to be done.

How many other people in the Windsor area are in the same business, and therefore in total, about how many of these locations and machines would we be talking about in Windsor?

Mr. Perrault: There are nine suppliers of game machines in the Windsor area. Numbers are sometimes difficult to get a handle on.

Mr. Breithaupt: Yes, I realize that. It is just to get a general overview of the size of this situation.

Mr. Perrault: I am going to put a guess on it of about 800 plus, maybe a small percentage--it is difficult to say. Competition is not always revealing as to their numbers.

Mr. Breithaupt: I realize that, but is it fair to say that the other eight members are approximately the same size, and therefore they would have in the range of perhaps 1,000 machines in the Windsor area, in probably 400 locations, something like that? Is that the kind of thing we are looking at?

Mr. Crane: I am going to call the other people operating. I do not know if he knows what the other people are doing. It might make better evidence.

There are two more people that are going to be called and if you are not happy with their answers, maybe Mr. Perrault could be brought back, but I do not know whether he can answer how many Mr. Masse has and how--

Mr. Breithaupt: No, I do not mean to pry into what your particular business operations are, other than to get just an overview of the kind of thing we are looking at.

Mr. Perrault: What was your suggestion as to the number of locations?

Mr. Breithaupt: It would seem that if the others were about your size, that you are looking at perhaps 1,000 machines in 400 locations in Windsor, as a framework.

Mr. Perrault: That would not be too far off, just to get an approximation.

Mr. Breithaupt: And do you know of circumstances where particular complaints as to the operation of the machines or the clientele have come from the people you supply, the kinds of complaints that would reinforce what we have heard earlier about children out of school and money missing, and this sort of thing?

Mr. Perrault: Because you are working with these people on a daily basis, the people who work for us are usually made aware of that type of a problem. In my own course of business, that is usually responded back to me. There is usually an ear to the ground, so to speak.

I have not had any complaints recently. Sometimes on a new opening, there may be the odd objection to the idea and then afterwards those objections are dispelled.

Mr. Breithaupt: So, in the Windsor area, we are dealing with two arcades, but most of the machines--indeed, I suppose 90 per cent of the machines or more--are in locations around the city, with one or two machines apiece.

Mr. Perrault: Are you talking about locations where there are one or two machines?

Mr. Breithaupt: Yes.

Mr. Perrault: That is probably more the case, but there are also circumstances where they are used in conjunction with other entertainments, arenas and so on.

Mr. Lane: Mr. Chairman, this may be an unfair question and the witness may not wish to answer, but I would be interested in knowing the answer if he feels like giving it to me.

In recent years our economy has fallen on hard times and we have had a great deal of unemployment. I understand Windsor has had a fair share, maybe more than its share.

Most families have fewer dollars to go around to buy the necessities of life than they had three or four years ago. Most business people are getting less return on their dollar investment in their businesses, and some of them are no longer in business because they have gone bankrupt.

I would just like to know how the returns on the arcades have been this year or last year as opposed to two years ago. Are the profits going up according to the dollars invested, or are they going down? What is the situation financially?

Mr. Perrault: Going back say 18 months ago to a year ago, we had a skyrocketing sales factor. I have to claim that in this case it has been more the fad.

In the last few months, especially since the turn of the year, getting over January and I think from this point on, I think the rest of the people here would probably concur that we are not away from the economic problems and the economic lows. It is hitting us just as hard as everyone else. I think that the fad period is over and we are finding a levelling-off period now.

Mr. Lane: So you think that it was really sort of a fad a year ago, and that it has now become less attractive, or there are fewer dollars going into it, from your point of view?

Mr. Perrault: Unfortunately, the fad has levelled off for us.

Mr. Lane: I do not know if that is unfortunate. I think it is fortunate, really. I hope it is, anyway.

Mr. Swart: Mr. Chairman, I wonder if I could have a supplementary.

You say the income is levelling off. What is the pattern with

regard to the number of machines that are being put in? Has that levelled off or are you getting a substantial increase in installation? By "you" I mean the industry generally.

Are more machines being installed?

Mr. Perrault: No. In the last six months especially, in fact in the last couple of months or so, there has been a definite drop in the number of locations that are opening up.

We rate this by the number of inquiries we have from people wanting games and it has dropped, I would say, probably by 70 per cent.

Mr. Swart: What would be the percentage increase, say, during the last three months on the number of machines? Is there still a percentage increase?

Mr. Perrault: Are you looking for a percentage increase in the number of locations opening?

Mr. Swart: Yes, or the number of machines out.

11:40 a.m.

Mr. Perrault: There is a decline, I would say.

Mr. Swart: There is a decline?

Mr. Perrault: I would say there is a definite decline.

Mr. Renwick: Mr. Chairman, I will try to avoid repeating what any of my colleagues have said. I guess I have more or less generalized questions, and you may have to answer them only from your own knowledge of your own business. How is the business organized behind you as a supplier?

Mr. Perrault: Are you looking for the chain of distribution?

Mr. Renwick: Yes. Who owns the machines, who controls the machines, who leases them, where do they come from, who manufactures them?

Mr. Perrault: The chain of distribution would be the actual operator of the game itself, then to myself; I would be considered an operator. I get my machines from a distributor. This lady sitting beside me, Mrs. Currie, would be considered a distributor of games. She would buy from the manufacturers.

Mr. Renwick: And who is the manufacturer?

Mr. Perrault: There are several different manufacturers.

Mr. Renwick: How many in Canada?

Mr. Perrault: Thousands.

Mr. Renwick: Of the machines that you control, now many of those would have been manufactured in Canada?

Mr. Perrault: In a percentage figure, probably 10 per cent.

Mr. Renwick: And the rest would be imported from the United States?

Mr. Perrault: The manufacturing end of this business in Canada has not quite developed to its fullest potential as of yet.

Mr. Renwick: I think we could say that about a number of areas.

[Laughter]

Mr. Renwick: What we are talking about is that about 90 per cent of the machines come from the United States.

Mr. Perrault: Or other countries. Japan.

Mr. Renwick: From the United States, then--

Mr. Perrault: Countries other than the United States as well--Japan, Europe.

Mr. Renwick: All right, but what percentage would come from the United States?

Mr. Perrault: Sixty per cent.

Mr. Renwick: And the rest from where, Japan?

Mr. Perrault: Japan and elsewhere.

Mr. Renwick: Perhaps you could help me. My knowledge of this kind of distribution system really dates to the time of the introduction of the laundromat. I know then that it was a highly organized and highly controlled business from its origin in Chicago.

Is there any analogy to that kind of organization and control of the business, bearing in mind that it is a substantial dollar operation by the companies behind the organization?

Mr. Perrault: Each of the individual operators--and again I am using that phrase concerning myself, I am an operator--we have no outside alliances whatsoever.

Mr. Renwick: Is there anybody between the distributor and the manufacturer?

Mr. Perrault: Not generally, no. I am not a distributor, so I am not all that familiar with that phase of the business.

Mr. Renwick: Obviously not knowledgeable about the business. I can ask these questions a little bit--

Mr. Crane: Mrs. Currie is a distributor. I do not mind if

she answers Mr. Renwick if Mr. Perrault cannot answer the question.

Mr. Renwick: Yes. Is there anybody behind the distributor, between the distributor and the manufacturer?

Mrs. Currie: Just the bank.

Interjection: That is a common denominator.

[Laughter]

Mr. Renwick: In other words, you get your machines, either by purchase or by lease, or by some other franchise--

Mrs. Currie: By purchase.

Mr. Renwick: And you buy from a single manufacturer?

Mrs. Currie: No, we buy from many manufacturers.

Mr. Renwick: Many manufacturers. And you arrange all the import.

Mrs. Currie: Yes.

Mr. Renwick: Did you have anything to do with the collapse of the Canadian dollar?

Mr. Currie: It has stopped our buying in the States, and we are looking a little closer at the Canadian manufacturers.

Mr. Renwick: Mr. Perrault, if I could come back to your organization, I think you would like us to take the position that your organization is basically a self-governing organization in the Windsor area. Is that correct?

Mr. Perrault: Yes.

Mr. Renwick: To what extent is it representative of all of the people in the industry?

Mr. Perrault: In the Windsor area it would represent, at this point, 100 per cent.

Mr. Renwick: One hundred per cent?

Mr. Perrault: Yes.

Mr. Renwick: What are the sort of rules or regulations, bylaws or understandings that the members submit to when they become members of your association?

Mr. Perrault: We have adopted in our association the same rules and regulations that govern the provincial association, the metropolitan association. We abide by their code of ethics.

Mr. Renwick: I do not know whether we need to have a copy of it, but there is a code of ethics with respect to the--

Mr. Perrault: The provincial association with which we--

Mr. Renwick: And the members of your association accept and abide by whatever is in that code of conduct.

Mr. Perrault: That is correct.

Mr. Renwick: Assuming for the moment, as I do, that elected people somehow reflect the atmosphere in which they are living at the time as far as their constituents are concerned, how is your association prepared to respond to a legitimate area of regulation for the city of Windsor with respect to the various items in subsection 2(3)?

I would like to go through them, if I may, one by one. How are you prepared to respond to the concentration question which presumably is what is referred to in clause 2(3)(a)--that is, the areas in which arcades may be permitted?

Mr. Perrault: Again, as long as we have some input into this.

Mr. Renwick: In other words, if the bylaw were passed, including a provision such as that, as long as your relations with the city council were such that you could discuss with the appropriate commissioner what they intend to do about it, is that it?

Mr. Perrault: That is right.

Mr. Renwick: What about the hours clause 2(3)(b)? Perhaps you could tell us what the hours are now.

Mr. Perrault: Of the two arcades that are operating in the city, I do not operate either one of them. That question might be better directed to the operators of those arcades.

Mr. Renwick: Perhaps I could. What would the hours of operation be?

Mr. Chudyk: From 11--

Mr. Chairman: Excuse me. I do not believe Hansard has your names. Could you identify yourselves?

Mr. Chudyk: Ed Chudyk, and I own--

Mr. Chairman: And the gentleman next to you?

Mr. Masse: Dan Masse.

Mr. Chairman: Masse.

Mr. Masse: Correct, the Tally-Ho Distributing Co.

Mr. Chudyk: I have been operating Fast Eddy's now for eight years. The hours are from 11 in the morning until midnight, seven days a week.

Mr. Renwick: Have you any indication of the extent to which the city is proposing to regulate your hours?

Mr. Chudyk: No, I do not.

Mr. Renwick: Then if I could go back to Mr. Perrault, the next three items--clauses 2(3)(c), (d) and (e)--obviously refer to children, minors. To what extent is your association prepared to accept some degree of regulation with respect to age?

Mr. Perrault: It is discriminatory.

Mr. Renwick: Leaving aside the Charter of Rights and the degree of discrimination, but recognizing that one of the concerns is with respect to minors, I am not arguing the legitimacy of the fear or not. I am recognizing the fear.

To what extent are you prepared to accommodate your operations to the questions related to minors?

11:50 a.m.

Mr. Perrault: Generally, the locations we operate are self-regulating as well. It is usually a voluntary thing. For example, we had a game room in conjunction with a billiard hall and the particular operator was instructed not to allow children in during school hours.

Mr. Renwick: What about the question of the age of 16 as the limit for people to come into your operations?

Mr. Perrault: Again, it is discriminatory, and in a lot of circumstances--

Mr. Renwick: There are worse forms of discrimination than that. Perhaps children have been discriminated against for a long time, but I am not arguing the Charter of Rights. Leaving that aside, it is generally assumed in our society that people under the age of 16 or thereabouts need some kind of supervision of one kind or another, either through their parents or the school system.

Mr. Perrault: By the same token, what if the city would feel they should not be allowed into bowling alleys, roller rinks and ice skating rinks and this type of thing? If we are going to discriminate against children under the age of 16, I think it should encompass all forms of entertainment.

Mr. Renwick: All forms of entertainment? What the hell would the kids do?

Mr. Breithaupt: Buy Wintario tickets, I guess.

Mr. Renwick: That has not been particularly helpful. With respect to the licence fee matter--

Mr. Perrault: As long as it is not prohibitive.

Mr. Renwick: I know people would prefer no licence fee, but assuming the municipality can impose a licence fee, have you any problems with that?

Mr. Perrault: No. Providing the licence fee is not prohibitive and is attached to the location, as opposed to an individual machine.

Mr. Renwick: You do not want to have it attached to the machine?

Mr. Perrault: If a game room is opening up, I do not think there is any objection to anyone paying licence fees or taxes. That is expected in any business.

Mr. Renwick: Mr. Crane put me at an immense disadvantage by quoting, on the very first page of his brief, not only my next door neighbour, but my former colleague and former member for Broadview, John Gilbert, who is now one of Her Majesty's judges.

Mr. Crane: I did not mean to undercut you, Mr. Renwick.

Mr. Rotenberg: Mr. Crane, are you the same J. D. Crane who appeared and appealed a city of Toronto zoning bylaw before the Divisional Court?

Mr. Crane: Yes.

Mr. Rotenberg: Is it true your allegation was that the city of Toronto could not zone places of amusement or video arcades separately from other matters? Was that your contention before the court?

I will put it another way. Is it true the court upheld the city of Toronto bylaw which discriminated by having video game arcades as a separate category in the zoning bylaw?

Mr. Crane: I am not sure which case that is. I do not have the case in front of me; you have an advantage. I will try to answer it if you can give me the case.

Mr. Rotenberg: You were appealing the bylaw.

Mr. Crane: Yes, but there were a number of cases. That is the problem. Was it with Mr. Justice Steele?

Mr. Chairman: Yes, it was.

Mr. Crane: To answer your question, Mr. Rotenberg, that was a different type of situation. That was a zoning bylaw and the law is quite clear once you get the zoning bylaw approved by the Ontario Municipal Board--that is the protection--the OMB has a hearing. The OMB heard that bylaw and said it was crude planning. It sent it back and said it wanted to hear more evidence.

In the interval, the city of Toronto, somehow or other, slipped that bylaw through. When we got to the Divisional Court, I was arguing a very difficult case because it was an approved zoning bylaw and zoning bylaws can discriminate. Licensing bylaws cannot.

The city of Windsor's bylaw and, as I understand it, Mr. Rotenberg, your Bill 11 are licensing bylaws and you cannot discriminate. But you can discriminate with a zoning bylaw, and that is what Mr. Justice Steele said.

That went back to the OMB because Mr. Justice Steele said it should go back. We had a rehearing, and Gary Smith of Weir and Foulds appeared on that matter. I do not want to go into a lot of detail because we are not arguing that case, but I will say that rehearing was not very satisfactory.

We do have on the books a 1977 bylaw that restricts pinballs in arcades in the city of Toronto to C-4 zones. C-4 zones are slaughterhouses and things like that. The only place you can establish one now is south of the Gardiner Expressway and out by the slaughterhouses in the west end of the city.

Mr. Rotenberg: The reason I asked the question is that some of the municipalities are questioning the power. I just wanted you to confirm that the city of Toronto's power is upheld by the Ontario Municipal Board and the Divisional Court so they could restrict the specific use of video game arcades to industrial zones.

Mr. Crane: The issue was there was no real evidence and the OMB sent it back. Somehow or other--perhaps we did not appear at the second hearing or something happened--the bylaw got approval. Once it is approved by the OMB, it is game over. They can discriminate to their hearts' content and they have done it. You cannot open one up in Toronto unless you want to open it up south of the Gardiner or out by the packing houses in the west end of the city. There is legislation there right now.

Mr. Rotenberg: I am getting copies of this Divisional Court decision for members of the committee. I think it might be interesting to read that decision. They are here now.

Mr. Crane: Do you mind distributing one of the ones I won?

Mr. Brandt: Mr. Rotenberg was touching on some of the areas I wanted to get into. I wonder if you could elaborate a little with respect to the way the city of Toronto approached this. Are you indicating that was totally unsatisfactory in its application to a situation like Windsor or Kitchener in that it was too restrictive because of the zoning category? What was your basic approach on that?

Mr. Crane: To start off with, when we went to the OMB our position was that we wanted to have the planning. There was a need for this type of crude planning. To give you the historical perspective, they were then attacking the body rub parlours and this came by the OMB at the time the shoeshine boy was murdered. So there was a real movement afoot to ban massage parlours and we were lumped in with it. We got severed off from the massage parlours.

The OMB said it was crude planning and they would not approve it then. Somehow they said it was crude planning as they said the 40-foot bylaw in Toronto was sort of just a holding bylaw. The city planners said, "We want to restrict them to Yonge Street or where they are in 1977 until we have time to get some good studies and some good planning."

Unfortunately, we never heard the good studies or planning because that holding temporary bylaw got approved by the OMB. I tried to quash it in Divisional Court--I do not have the reasons in front of me--and the Divisional Court said no, we should go back to the OMB. We went back to the OMB and the member hearing it did not want to get into it, so we are stuck with it.

To answer your question, it allows the existing operators on Yonge Street to continue, and they are the ones the aldermen and the people are complaining about. It discriminates against any one starting new ones. The Windsor bylaw is even worse; it presumably would be retroactive. That would be confiscatory in my view. The city of Toronto one was bad enough; the Windsor one is even worse.

Mr. Brandt: Has the city of Toronto in effect dealt with the existing arcades as a legal nonconfirming use within the context of the zoning?

Mr. Crane: Yes.

Mr. Brandt: What are they doing with respect to licence fees for arcades? Do you know the level of fees? Do they license the arcade or do they license on a per machine basis? What is their approach?

Mr. Crane: I cannot remember right now.

Mrs. Currie: It is a fee to the arcade.

Mr. Crane: It is a fee to the arcade, Mrs. Currie tells me.

Mr. Brandt: Irrespective of the size? I would think there would be some differentiation that could be argued for, as an example, a large arcade with 40 or 50 machines and a corner store that has one or two in it. Are you indicating they charge the same rate for all operations?

Mr. Crane: My understanding of that is--and I wish I had brought that brief with me--there is a certain licence fee from one to 10 machines--I may be wrong--another fee from 20 to 30, and another fee--I have been out of that particular case for five years and I honestly cannot answer the question.

Mr. Rotenberg: My information is they license the places of amusement not the individual machines. That is done by the Metropolitan Toronto licensing commission for all of Metropolitan Toronto. They license the places of amusement, and my understanding is that it is the same fee no matter how many machines. They license the premises not the machines. It is not a prohibitive fee.

12 noon

Mr. Brandt: Suppose this matter was to be dealt with as a zoning matter rather than a licensing matter. You have indicated the city of Toronto is rather restrictive in that you are categorized--or lumped in, if I may use your words--similar to the operation of a slaughterhouse.

Mr. Crane: It is the C-4 zone. If you look at the city of Toronto zoning bylaw, any of you who are from Toronto, C-4 includes slaughterhouses, heavy industrial, quarries and so on. We are in a C-4 zone. It is a basket clause. If they cannot find a place for you in C-1, C-2 or C-3, you go into C-4; it is a catch-all. The C-4 zone in Toronto is south of the Gardiner, in the heavy industrial, slaughterhouse area, and in the west end of the city. That is the only area you can establish--

Mr. Brandt: Could you offer an opinion as to what type of business you are similar to, and what type of zoning would you suggest would be applicable to this type of business if it was handled as a zoning matter?

Mr. Crane: I think it would be similar to other forms of recreation. Like Mr. Renwick, I do not want to stop the children from having some fun. It would be similar to bowling alleys, curling rinks, movie houses, theatres, roller rinks, etc. We seem to be attacking the problem from the back instead of the front. It seems to me the real problem is parental control. In the old days these children might be stealing hub caps or something else. I do not think you can blame all these social evils on pinballs.

Mr. Elston: Substitution.

Mr. Brandt: Could we establish for the record that the municipality does at present have the power to zone or limit the establishment of these types of amusement arcades through normal zoning bylaws?

Mr. Crane: That is my understanding of it. This case--

Mr. Brandt: This case clearly establishes that principle, does it not?

Mr. Crane: The city of Windsor would have to have a hearing before the OMB, presumably in Windsor. My clients presumably could give evidence and, hopefully, the man or lady sitting on the OMB would decide there was no need for it. Once the OMB approves it, it is game over. You cannot challenge it in the courts.

If it is a licensing bylaw, if you pass this licensing bylaw with all the discrimination in it, it is my respectful submission the Divisional Court would reach a different result. They would quash it because it is not a zoning bylaw.

The protection we have is that once you pass a zoning bylaw, we have another run at it before the OMB and we deal with planners. We have to hear the city planner. We would have to hear a great deal of hard evidence that you need it. Once the OMB says it is good, it is good.

Mr. Chairman: Mr. Mitchell, you were out and I went by you.

Mr. Mitchell: Just a couple of questions. I apologize, I got called to the phone. I am a little puzzled and I would like some clarification on the comments made. This question is directed to the parliamentary assistant and it may have been asked while I was out

of the room. It deals with the retroactivity. It was stated by the solicitors that if it went through it could be applied retroactively. If I understood the parliamentary assistant, he said there were other pieces of legislation which would not allow it to be retroactive. Could you clarify that particular point?

Mr. Rotenberg: Subsection 110(7) of the Municipal Act says a municipality, by licensing, cannot make it retroactive as far as location is concerned. You might check with legislative counsel to confirm that if you wish. The solicitor for our ministry has indicated that section would apply, and the way the Windsor bylaw is now written they could regulate locations but it would not be retroactive.

To be fair, if a clause is added to this thing, "notwithstanding subsection 110(7)," you could maybe overcome the principle of retroactivity. If the committee is in favour of the bill, it will have to decide if it wants to go that far and take one more right away from the people who, by the present Municipal Act, cannot either by licence or zoning be taken out retroactively.

Mr. Mitchell: May I redirect my question to legislative counsel?

Mr. Revell: It is an area that is really vague as a result of this bill as to what is the effect of subsection 110(7) of the Municipal Act.

I think I would recommend that it should be addressed in the bill in terms of, as Mr. Rotenberg is saying, a specific amendment. It may be that the amendment should either be to clarify that it has a retrospective effect by notwithstanding subsection 110(7), or it should be specific to protect the existing businesses.

I think that the principles which came out of the McRuer report in the late 1960s would say that you do not retroactively take a person's business away or try to take away a person's livelihood.

There are two competing interests here. There is the interest that the city of Windsor is presenting to us, where these businesses may be located. However, I think that either way, whatever the committee's wish is, this is one bill where it should be specifically clarified. I think the word "retroactive" is not quite the right word. "Retrospective" means that the locking into force prior to the actual passing--

Mr. Mitchell: No, but the law could be applied retroactively.

Mr. Revell: "Retrospectively" would be a more appropriate word.

Mr. Rotenberg: As far as hours of operation are concerned, I may have inadvertently misled the committee earlier when I discussed clause 2(3)(b) because under Bill 11 a municipality will have the power to regulate hours of a business. It would have to regulate all amusement arcades in the same way. We could not discriminate as to age. But if Bill 11 comes into force, they would

have the power to regulate the hours of operation, and that would be imposed upon the existing businesses as well as the new ones. The regulation of hours would, in the terms of clause 2(3)(b), be retroactive, that is, apply to existing businesses.

Mr. Mitchell: Since you have raised the issue of Bill 11, Mr. Rotenberg, perhaps you could tell me where pinball arcades and so on would be in Bill 11. I looked through it very quickly since it was circulated to us. There are a number of things identified here, such as adult entertainment parlours, but they seem to deal with more specific subjects.

Mr. Rotenberg: Look at subsection 2(1): ". . . bylaws may be passed by the councils of local municipalities for licensing, regulating and governing any business carried on within the municipality."

What Bill 11 does is take out all the specific provisions in the Municipal Act for licensing. There are so many provisions for different businesses being licensed. We in the ministry feel that a municipality can license any business it wishes to license. Therefore, if it wants to define pinball arcades or video game arcades as businesses, it can license them as a separate category. We have drawn up the act specifically so it can license any businesses it wishes.

Mr. Mitchell: Then I have to ask why in Bill 11 you do go on to identify certain types. If you are telling me that subsection 2(1) is all-inclusive, then why do you go on within Bill 11 to--

Mr. Rotenberg: Because we are giving, in taxis and body rubs and adult entertainment parlours, more broad and sweeping powers to those categories only. They can be monopolistic, as you can restrict the numbers, and the licensing fee for those can be beyond just a nominal fee.

Because of the unique business of the taxis and the way they operate, and because of the problems with body rub parlours, which came up in the Legislature a few years back after someone mentioned the shoeshine boy incident, we are continuing the provisions for body rub parlours and taxis which are presently in the act: that a municipality can have special powers for those, but not for any other businesses.

Mr. Mitchell: If I may go on, I want to deal with zoning bylaws and so on. I look at this decision handed to us which, in the opinion of the learned judge, was that under the Planning Act the municipality was able to exercise control. To come back to my concern about being retroactive, I may have some particular concerns with arcades within areas close to schools, but I also feel that if there is some confusion on whether they can apply this--what was your word, Mr. Revell?

Mr. Revell: Retrospectively.

Mr. Mitchell: Retrospectively. Then that is, in fact, taking away a right that has been zealously guarded over the years--the right every person had to apply for a hearing to the Ontario Municipal Board with respect to zoning. I understand that this bill would be taking that right away from these people.

If the municipality were to enact a zoning bylaw, say, under C-1 zoning or C-2 zoning or whatever it might be, at least the people who operate these arcades would have the opportunity to make their pitch. They may not win, but at least their rights as citizens have not been taken away.

12:10 p.m.

Mr. Rotenberg: Mr. Mitchell, there is no question in my mind or that of the legal staff or ministry--and it is confirmed by the court case--that every municipality in Ontario has the right and power to define video game arcades as a specific use, to regulate and prohibit them in any or all parts of the municipality. In fact, the court case is very specific on that.

Also, that would not be retroactive. Any arcade now existing would become a legal nonconforming use as in the city of Toronto where the Yonge Street ones are legal nonconforming. Despite what the solicitors from Kitchener and Windsor have said today about if they went to council tomorrow and passed a bylaw, in their zoning bylaws, the city of Toronto has been defining video game arcades, either prohibiting them in certain areas or allowing them only in certain areas.

Mr. Mitchell: Yes, but if I may interject, with respect, Mr. Rotenberg, what is being done here by the city of Windsor and others is that they are reacting to a situation that they have a great deal of difficulty with. I think you have to appreciate this.

Their bill is reacting to what they see as a situation. They recognize that with appeals and so on there are lengthy periods of time involved. They see that as a problem. But if I read that into what they are promoting here--

Mr. Rotenberg: Without commenting on the merits, which I will do later, if they passed a bylaw at council tomorrow, despite the OMB hearings, the appeals and so on, the bylaw takes effect the day they pass it. Once they pass the bylaw in council, they can refuse building permits, licensing and whatever to anyone who applies, until it is overturned.

Mr. Mitchell: That is true.

Mr. Rotenberg: The effect of it would be immediate. You are also correct in that it would not have a retroactive effect on existing businesses.

The way we interpret the Windsor bill now would also not deal with any businesses that are there now, except if we put in the "notwithstanding" clause. Then, as the legislative counsel says, there are some problems with McRuer and so on as to whether or not we can do that sort of thing.

Mr. Breithaupt: Perhaps we could follow through on that point, Mr. Chairman, and get from Mr. Rotenberg the government's view as to whether the policy of continuing the existing legislation is the one that the government prefers. Or, are they prepared to see a private bill like this go ahead and no doubt be brought in by quite a variety of communities if they so wish?

Mr. Rotenberg: If you want me to, I will give you an indication now unless something else is said to us in the next period of time.

The government does prefer that the regulation of location be done by zoning. I must note that I am fighting one of these operations in my riding, so I have a lot of sympathy for everyone who is fighting video game parlours. But we would prefer it to be done by zoning because, in that case, every video game operator who wants to establish a business has the right of appeal in an OMB hearing which we do not want to take away from people.

From a location point of view--and all six municipalities in Metro have done it; they have all been approved by the OMB except for North York--we prefer that it be done by zoning. That is why we had the debate the other night to take it out of the Mississauga bylaw.

Secondly, as far as hours of operation are concerned, once Bill 11 passes, municipalities can regulate hours of operation generally. As indicated earlier, there is an application from Metropolitan Toronto to us to be able to discriminate in hours of operation, that is, to accept different hours of operation for people under 16 as against the general community.

We are looking at that probably from the point of view of the new constitution, whether it is proper or not. As I said, because of that and legal opinions, it means I cannot commit ourselves to that in Bill 11. I personally have a lot of sympathy for adding to the general regulation of hours in Bill 11 a specific clause for video game arcades that would allow municipalities to effectively prohibit children during school hours.

I am not committing the government to that. I say I have a personal sympathy for it.

Mr. Breithaupt: If I could just complete these questions, whether there will be future legislation, or as Bill 11 may develop, and what it may contain, am I correct in saying that the government's view is that effectively section 2 of this bill, dealing with the ability to have these kinds of bylaws, is not excepted?

Mr. Rotenberg: Section 2 of the Windsor bill? Yes. Part of it is, but most of it is not, on the basis that we feel zoning should be done through the proper Planning Act processes only. It should not be done through a licensing process.

Mr. Brandt: Mr. Rotenberg, if you were to combine the zoning powers of a municipality with the effects of Bill 11, could you tell us what would be lost in the bill being proposed by the city of Windsor to that municipality?

Mr. Rotenberg: Yes. Clause (c), which would not allow a person under the age of 18 to be employed--which I really cannot understand and I think is quite discriminatory--and clause (e) that no amusement arcades can be within 150 metres of each other or

within 150 metres of a school in the city of Toronto. That has been passed by the Ontario Municipal Board.

Mr. Brandt: That can be handled as a zoning bylaw.

Mr. Rotenberg: Yes. As to licensing, it is a principle of Bill 11, with the exception of taxis and body rubs, that the licensing can only be--I think it is \$10 or \$25 for the examinations required. As much as will reimburse the municipality for the cost of administration.

In other words, it is a principle of Bill 11 that licensing cannot be used as a prohibition; you cannot put a fee like \$100 on a machine--

Mr. Mitchell: Or punitively.

Mr. Rotenberg: Yes, the fee portion cannot be used punitively or discriminatively.

Mr. Swart: Or as a fund raiser.

Mr. Rotenberg: Yes. But by combining the Planning Act and Bill 11, when it is passed, they can do everything else, except get at the existing ones from a location point of view. My understanding is there are only two existing arcades in Windsor, because as their own bill says, those variety stores--those that have one or two machines--will not be covered by this anyway. Nearly everyone is defining an arcade as having three or more machines and that seems to be an acceptable definition.

Mr. Crane: I have more witnesses. I would like to call the ones from Windsor, at least.

Mr. Stevenson: If he would like to go ahead, I can hold--

Mr. Crane: I just wanted to see if we could get our Windsor people out. This is their second day here and if we could hear them, I do not mind coming back as many times as you want.

Mr. Swart: I want to put a question to this witness, because I think he is the best one to answer this hard question.

I wanted to pursue the matter of the capital costs of operation, of stocking up the business and installing the machines a bit further. This has some relationship to the retroactivity of the bill which is before us. There was also another word used in this respect, retrospectivity.

I do not think your analogy is entirely applicable to the retroactivity and the zoning bylaw. Sometimes there is an industry in a residential area with hundreds of thousands of dollars invested, so you cannot fairly make that change. From what you have said, it does not seem that would exist to the same degree here.

I wanted to ask what the costs would be to you, not as a distributor--you call yourself an operator, do you, as distinct from the lessee? What would be the costs to you as an operator, not as a

lessee, for installing a machine in a new location, for taking it out and installing it in a new location?

I am ignorant on this. I do not know what is involved. I assume they are plug-ins and that is about it. Is that correct, or is there substantial capital cost in changing locations of machines from one site to another?

Mr. Perrault: How many machines are you speaking of?

Mr. Swart: I am speaking per machine. I realize it is probably cheaper to move three machines to one location than to move three machines to separate locations. I am asking for some ball-park figure.

Mr. Perrault: You are asking what my cost would be?

Mr. Swart: Yes, the cost to you.

Mr. Chairman: Gentlemen, I am having a little trouble, and probably others are, in hearing Mr. Swart. Carry on please.

Mr. Swart: Yes, I just want to know the cost of relocating a machine from one site to another to you as the operator.

12:20 p.m.

Mr. Perrault: It is somewhat difficult to answer. I do not know if we break it out in cost per move. I would guess that, per machine, it would be somewhere in the neighbourhood of \$50 or \$75.

Mr. Swart: That is satisfactory. I just wanted to know the general range.

Let me put it this way: if they are not considering the business opportunities in a location, the actual cost of moving a machine from one area to another--if there was retroactivity and someone had to take it away from the school and move it into another site, provided that site was available--there is not a very large capital cost in doing so?

Mr. Perrault: There would be to the person operating an arcade. You have put him out of business.

Mr. Swart: Yes. I am talking about capital costs. I said capital. The actual cost of moving the machines is not great.

Mr. Perrault: No.

Mr. Crane: If everyone has finished, I will call my next witness.

Mr. Chairman: Yes. Mr. Stevenson has a question for Mr. Rotenberg, but you carry on with the other witnesses, if you would, please.

Mr. Crane: We have Mr. Masse, Mr. Chudyk, Mr. Groulx and

Mrs. Currie, who I would like to get through, if I could, in 20 minutes.

Mr. Chairman: Yes, but for the sake of expediting matters, we will assume they will say the same things as your first witness. Would you only cover others? I think we can make an assumption here that they will agree with his contentions and what he has said to date.

Mr. Crane: I will cover new matters, but some of them are different operators. Mr. Chudyk, for example, is an arcade man. This man has been asked a lot of questions about arcades and he does not have one.

If you will permit me, I can get through with all of them in about 10 minutes. I do not think I have taken too much time. A lot of the time, quite properly, has been questioning. So if you will let me get them off the starting blocks--

Mr. Masse, could you step forward to the microphone and tell us your full name, where you operate and what business you have please?

Mr. Masse: My name is Dann Masse. I am the president of Tally-Ho Distributing Co., which has been in business for 34 years. It was founded by my father and we own, operate and distribute games in the Windsor area, and have been doing so for 34 years. We employ 14 people directly and we employ many others indirectly; part-time people and people in convenience stores and things like that.

We have no machines or games in locations zoned as simply residential, although in the place where we practise business we have an arcade in the front and we operate a machine in the back.

I do not know of any groundswell or of anything--as a matter of fact we had an open radio line on, about May 20, where the host of the show encouraged people to call in with complaints regarding arcades, the games, pinball machines. There were no complaints. The show ran for approximately three hours, and there were no complaints regarding videos and things like that.

I have listened to other people from Kitchener and from Cambridge. I do not believe that Windsor has this problem.

We are talking about two arcades, and the fellow from Kitchener is talking about getting rid of five of them. I do not really see the relationship there at all.

Mr. Crane: Do you want to tell me a little bit about yourself? You are married with two children, is that right?

Mr. Masse: Yes.

Mr. Crane: Previous to coming into this employment, you were employed where?

Mr. Masse: With Electrohome Ltd. for 10 1/2 years.

Mr. Crane: What were you doing with Electronome?

Mr. Masse: I was the regional service manager for them in Winnipeg.

Mr. Crane: When did you come back into this company?

Mr. Masse: In September 1981. That is when my father retired.

Mr. Crane: There is a typing error at the bottom of page 7. The company has been in business 34 years, and not 44. Is that right?

Mr. Masse: Yes.

Mr. Crane: Is there anything else you wanted to tell the committee?

Mr. Masse: No.

Mr. Crane: Okay. The next witness. Mr. Chudyk please.

Mr. Chudyk: My name is Edward Chudyk, and I have lived in Windsor all my life. I am 46 years old. I have a dining lounge business on Ouellette Avenue. It was an empty store for a couple of years. I opened up this restaurant.

I opened up Fast Eddy's Arcade 8 1/2 years ago. It is on Riverside Drive, which is one of our main streets. That store was empty for 12 years, an eyesore to Windsor and its people, with birds flying in and out of the building and broken glass.

I talked to the person who owned the building. He agreed to let me put an arcade in and I had to sign the lease. There were other buildings on the block that were empty, but now the whole block is sort of exciting and they want to make it an historical site. I feel that I did a lot of good for that particular part of the city by putting in this arcade.

I have no problems with my arcade. I have never called the police, never had fights. It is sort of a tourist attraction and we have had write-ups in magazines. A car magazine used the front of it for a picture in their calendar and sold a lot of calendars with it. In the summertime we have people taking pictures of the place; they are snapping pictures all the time. I feel that I have done a lot for the city with my arcade.

I have had no problems whatsoever there. I hope there will not come a day that I have to close up, because I have been running it for 8 1/2 years now. If something happens here so that I have to close up, it will just take my livelihood away from me.

Mr. Crane: I should like to ask you two more questions. You are married with two children, is that right?

Mr. Chudyk: Yes.

Mr. Crane: Do you participate in any community activities in Windsor in addition to your business?

Mr. Chudyk: Yes. Through the Spats Restaurant, we have a party for the kids from the children's aid society at Christmas time each year, with Santa Claus and all that kind of stuff. Every time the safety patrols have something, they call us up and we make popcorn and donate stuff to them. Basically, that is what I do in a year.

Mr. Breithaupt: May I ask how many machines are in the arcade?

Mr. Chudyk: Yes. There are about 65 machines.

Mr. Barlow: A question to Mr. Chudyk. What would be the average age of your clientele be?

Mr. Chudyk: It varies throughout the day. For lunch hours, we have the businessmen in there. They play the games. Throughout the day, I would say from 20 to 35 or 40 years old. In the evening, probably from 16 or 17 to 25.

Mr. Barlow: Specifically, are there any younger fry there, the 10- and 12-year-olds? Do you get many?

Mr. Chudyk: There may be on a Sunday. We have a thing there--younger kids show up on Sunday with an older person and the person or the parents give them an outing on a Sunday. This happens at one o'clock in the afternoon, when we open up.

Mr. Barlow: But after school, after 4 p.m. Presumably they are not there during school hours.

Mr. Chudyk: No. As I say, we have never had any problems with the city on this.

Mr. Barlow: But after school hours, after 4 p.m., do you have any influx of kids from the elementary schools around there dropping in?

Mr. Chudyk: No, not right after school, but in the evenings, 6 and 7 o'clock in the evenings--

Mr. Swart: Is there a school close by?

Mr. Chudyk: By "close by"--

Mr. Swart: I mean a few hundred feet.

Mr. Chudyk: No. I am in the downtown area.

Mr. Crane: If there are no more questions of Mr. Chudyk, I will call Mr. Groulx, please.

Mr. Groulx: My name is Doug Groulx, and I am the president of the D and S Amusement Co. I am married and have two children, who both go to schools in Windsor. I attended W. D. Lowe Secondary

School, and graduated from there. Mr. Newman would know that. I have been in this business for 25 years. I operate approximately 60 outlets for games in the Essex county area. I have four full-time and six part-time employees.

I recently had the opportunity to be on a CKWW morning program for 3 1/2 hours. The host asked any citizen in the city of Windsor who was having problems with a child over video games, stealing or video game addiction to please call in.

12:30 p.m.

We did not have one caller. We had grandmothers who called to say that they had gone into a doughnut shop and for the first time played a game with their grandchildren. They never realized how much fun they would have.

This program ran for 3 1/2 hours in the Windsor area. I was on that program, and I answered a lot of questions.

A lot of people thought that we were under syndicated control, which we are not. In the Windsor area, I know that we are all legitimate business people, just like people in any other business.

As far as I am concerned, we have had a lot of bad publicity from the media, saying that we are making all kinds of money and everything else. I have approximately \$750,000 invested in my business. I think that is a pretty big investment for someone to ruin by saying that, after all these years, there is a new law; we have an age limit, we have this, we have that, and it might jeopardize my business.

I was with the members of the amusement association when they asked city council at times to sit down and talk over problems, and I never got an answer for these letters. I cannot understand what Windsor's beef is, coming here when they did not approach us as a group. I do not understand this.

You know what my children say? There is a lack of communication between us. Well, we sure had a lack of communication. We wrote the letters. They are in the brief.

Mr. Crane: One last question. Would you tell the committee the date of that radio show please?

Mr. Groulx: It was approximately May 20.

Mr. Crane: That was after the first hearing here. Thank you.

Mr. Breithaupt: I presume there was some local publicity in Windsor about the bill which may have stimulated some interest in the topic.

Mr. Eakins: Do any of the operators sell food or other confections in their places of business?

Mr. Groulx: In the arcades? On, yes, most operators sell hamburgers, popcorn, snacks.

Mr. Eakins: Do they sell tickets, Wintario tickets, for instance?

Mr. Groulx: No.

Mr. Eakins: I am just wondering if some of the young people might come to buy Wintario tickets and then stay to play the machines.

[Laughter]

Mr. Chairman: Those are your people?

Mr. Breithaupt: Could I just ask one question? You said you have 60 locations. Approximately how many machines would that be?

Mr. Groulx: Some may have several. A hotel which operates under the Liquor Control Board of Ontario is entitled to five machines. Some places would have a pool table, shuffleboard, two video games, a music box. It depends on the way it is.

Mac's Milk is now putting in machines in each one of its stores. They figure it is good entertainment. I don't think that Mac's, as a store of its quality, would put in a video game if they thought it was a corruption, or if they thought it would make kids steal. If they were going to put a game alongside their candy and kids were going to steal, they would be out of business.

Mr. Crane: I wanted to call one last witness, Mrs. Currie. She is not from Windsor. She is my only witness who is not from Windsor but she will tell you in a moment about the company she operates. She is a distributor, and I thought you should hear from a distributor who is province-wide.

Mrs. Currie, would you tell the committee your full name and the name of your company; how long you have been in business, and a little bit about yourself, please?

Mrs. Currie: My name is Oriana Currie. The company is Currie Distributing. I married into the business in 1952. I was widowed into management in 1974.

We operate in southern Ontario, encompassing Cambridge, Kitchener, Toronto and going as far west as Woodstock and south, close to the Falls. We have probably about 15 steady employees, a few part-time. What else would you like to know?

I do not see the problem. Mr. Renwick had mentioned the evils here. I know what evils are not here. In Halton county schools, they operate video clubs. They supply their own video games for the kids. They charge \$1 membership and that way the kids can all play the video games.

We supply games for the Optimists' centre, the school for the retarded, the youth centres, the YMCA. We have sold games to a

geriatric ward of Stratford General Hospital; they just bought a Pac-Man the other day. So those places are not problems. They have them in their homes.

The only problem I can see is the youth under 18 and what he does with one quarter. It is where he puts that quarter. It is not the adults putting the quarters in. It is not the kids playing the games, because they have them in their homes and their youth centres. It is the one under-18-year-old who walks into an arcade. Other than that I cannot see the problem.

Mr. Crane: Do you think, Mrs. Currie, that there might be a problem with management--that is, perhaps controlling management as opposed to controlling the machines per se?

Mrs. Currie: There again, I gather the problem is the under-18-year-old kid, so therefore there could be a management problem. It is dealing with youth. There is not a problem dealing with two businessmen who come in to play a machine. There might be a problem dealing with an under-18-year-old.

Mr. Crane: You advised me this morning that you are familiar with Kitchener, and that there was some suggestion that some of the machines be put in the rink. Is that right?

Mrs. Currie: That was a suggestion from the mayor of Kitchener. He wanted machines in the rink because he thought it would generate quite a revenue, I guess. Then he had some of the operators call and complain because they did not like the amounts of revenue he was mentioning. They were all out of proportion.

Mr. Breithaupt: That's our mayor.

Mr. Crane: Mr. Chairman, Mrs. Currie could deal with any questions you want. She has been in the industry a long time. Those are all the questions I am going to ask.

Mr. Swart: I just wanted to clarify one thing while we are talking about this. Mr. Groulx, you stated that in Windsor there are only two amusement arcades.

Is that definition the definition which we have under this bill? When you say "amusement arcades," do you mean two buildings devoted entirely to the video games or that type of game?

The definition here, as I understand it, is a building is considered an arcade where there are three or more machines. I am just trying to clarify the answer that there are only two arcades.

Mr. Breithaupt: In other words, you do not consider it as an arcade with only three machines.

Mr. Groulx: Then I would have to classify every hotel as an arcade.

Mr. Swart: When they made the statement that there were only two arcades, that meant two buildings devoted to the machines of one type or another.

Mr. Groulx: Other than what I would have in my 60 outlets, it would be only hotels that would have more than that amount.

Mr. Swart: But this bill that applies would apply to a lot more than those two that we are talking about. This bill applies to any business which has three or more.

Could I ask this question? Could you estimate how many businesses this would apply to, where they have three or more?

Mr. Groulx: Other than hotels?

Mr. Rotenberg: Hotels are excluded in this bill, under the liquor licence.

Mr. Groulx: Other than hotels, it would probably be 10 that would have three games.

Mr. Swart: Three games or more?

Mr. Groulx: I would say there would be only two with more than five machines.

Mr. Renwick: They would be the only two that are represented here.

Mr. Swart: So we are talking about 10, in your opinion, with over five machines.

Mr. Groulx: They would have at least three or more, from between three and five.

Mr. Swart: We have a disagreement on this.

Mr. Masse: I would think there would be more like 25 to 30.

Mr. Rotenberg: Not counting hotels?

Mr. Masse: Not counting hotels.

Mr. Breithaupt: I think Mr. Swart asked how many he had, compared with how many there might be in Windsor.

Mr. Swart: No, I asked the question generally. I wanted to know how many there were were--I was just trying to get an opinion.

Mr. Brandt: In order to get a little better idea of how the industry operates--and I think Mr. Renwick was on to this line of questioning a little earlier--are the areas, territories or jurisdictions, from a distribution standpoint, franchised by the distributor of the machines to a particular operator?

12:40 p.m.

As I hear the story unfolding, people are operating in a geographic area such as Windsor and the surrounding area, Kitchener and the surrounding area and that kind of thing. How does that all

come about? Do you just decide you are going to operate in an area? How does that happen?

Mrs. Currie: It was not geographical. At least, in my case, it was not geographical. I had asked for distributorship in the early 1970s and I picked up one or two manufacturers. From there it grew. I would maybe ask another manufacturer, one of my choice, and if they thought we could do a job then we got it. But we do sell coast to coast.

Mr. Brandt: As I understand it from the way you described the operation earlier, you do not operate in Windsor at the moment.

Mrs. Currie: No, we operate in southern Ontario. We operate and we are distributors, so we operate in Kitchener, Waterloo, the Cambridge area, Toronto.

Mr. Brandt: Would there be anything to stop you from putting an operation or supplying an operation in Windsor?

Mrs. Currie: No, it would just be simple economics. It is too far to go to service the equipment. We do operate in Elliot Lake. That is quite a distance, yes.

Mr. Brandt: There is no one who determines what areas you can or cannot operate in? In effect, the territories are not carved up by some other individuals who determine who is going to go where?

Mrs. Currie: No.

Mr. Renwick: I do not know whether you, Mr. Crane, or any of your witnesses could answer this. I notice the document Mr. Wallace was referring to, which you have not seen but which raises the question in my mind about it.

When applications are made here for liquor licences, the board has been pretty diligent about the question of the character of the operator, the question of prior criminal records and so on. I think it is fair to say that the liquor outlets in Ontario are free from being dominated or influenced by organized crime in some way or another.

Do you think there would be any merit in that kind of protection for the public, generally, against infiltration into the business?

Mr. Crane: I could answer that directly, Mr. Renwick, if you would like. That was in my submission to Metro Toronto in 1974 when I was acting for some of the operators on Yonge Street: that we fill out a questionnaire like the Liquor Licence Act and have someone like Judge Robb, who is now dead and gone, do a very diligent search.

They go back to 1928 and they might find out that you did not have a radio licence, for example. Maybe they would not give you the liquor licence until you explained that it was not that serious a matter. They did a very thorough search.

I have appeared before city council and Metro council, and have suggested before Mr. Neville in the licensing committee that they have a questionnaire, a form like the liquor licence board, to get at this alleged problem. This bogeyman always comes out, that organized crime or something like that is involved.

You have seen these people here, legitimate citizens, and they have to live with this. If I may, I would like to adopt your suggestion again. I think it is very good, although I did make the suggestion in 1974 and repeated it in 1977 before this committee, differently constituted, when we were dealing with the Hamilton bill. It was Mr. Dean's bill then.

I made that very suggestion. If they wanted to control who is running it, they would have a questionnaire as to who you are, who owns the mortgage, do you have a criminal record, and have you ever been in trouble before. Perhaps that type of person should not get into the industry.

That would kill once and for all the bogeyman stories that you hear, that they are wicked people who are laundering money, that they are against motherhood and for sin. I think your suggestion is very good and I have made that suggestion. I may have even made it in this brief, I cannot remember, but I would certainly like to adopt it again.

Mr. Rotenberg: Mr. Renwick, in the Municipal Act now, the municipal licensing commission assumes that power and the new bill is the same. The municipalities are the licensing authority rather than the province. This gives them the power to reject someone on the basis of criminal record.

Mr. Renwick: Metropolitan licensing commission.

Mr. Rotenberg: The Metropolitan licensing commission and other licensing commissions do that, and the licence authority has that power now.

Mr. Renwick: I would not want it to be dismissed that lightly. I had at least two very lengthy conversations with the former chief, Mr. Chisholm, when he was head of the Liquor Licence Board of Ontario. It is not just a question of who appears and fills out the form; it is the question--present company, Mrs. Currie, and everybody else excepted--of whether there is some kind of an interlocking connection back into the woodwork about who is controlling who. When you have all of the various corporate, conveyancing or leasing devices and so on available, it is extremely difficult, as anybody involved in fraud investigation will tell you, to ever trace everything back into it.

I do not think, for one single moment, that the licensing commissions in Ontario have either the staff or the facilities to look into that kind of problem. I know Chief Chisholm, having come from the police--and perhaps having been appointed for that very reason--was very alert to the need for that kind of concern.

I am not suggesting it occurs in Windsor, but it would be a

matter of real concern in Metropolitan Toronto, as to who got hold of this very lucrative business.

Mr. Crane: Mr. Renwick, I do not understand--

Mr. Renwick: I do not think it is necessarily pertinent here, but it is an important consideration if we are going to be talking about general legislation or if Metropolitan Toronto comes forward with legislation.

Mr. Crane: I can speak for the Windsor Amusement Association. We came on record in favour of something like that if there was a need; indeed, maybe a statutory declaration. I am quite sure Mrs. Currie and my clients would not object to swearing out a statutory declaration in the form, nor would we object to being investigated if there was a real need, as long as it did not become a witch-hunt and we had to do this for every ma and pa beverage store.

Mr. Renwick: No.

Mr. Crane: But as long as there was a real need. We have made that suggestion before. We would like to get it on the table and have that issue out of the way.

Mr. Chairman: Thank you, gentlemen. Keeping in mind we break at one o'clock, I take it there are no further questions of these witnesses?

I believe Mr. Stevenson indicated he wished to ask Mr. Rotenberg a question. Would you do that now? Mr. Rotenberg, you indicated earlier you had a little wrap-up of the government's position.

Mr. Renwick: On a point of order, what is your intention for this afternoon?

Mr. Chairman: We will not be sitting this afternoon. I do not know about you people, but I have six appointments lined up 100 miles from here within two hours. That is my personal plan. I do not know about other members. We normally break at one o'clock on Wednesdays.

Mr. Renwick: I understand that. I am thinking of the importance of the bill, the time we spent and what other occasion there will be to deal with this bill before the summer recess.

Mr. Chairman: We meet tomorrow and Friday on estimates of the Justice policy field. On June 16, we have Bill P13, the Metro Toronto demolition bill. Many people are coming to that. Then we have the estimates of the Ministry of Consumer and Commercial Relations on June 17 and 18 and we carry on until they are finished or the House rises.

Mr. Renwick: Mr. Chairman, may I speak to my point of order further? Or I will defer to my friend.

Mr. Breithaupt: I was going to suggest it would certainly

be worthwhile if we could complete this matter. Could we agree to sit until 1:30 p.m. or whatever, just to clear this thing up?

Mr. Mitchell: No, I cannot. I have made commitments based on the sitting time as allocated by the House. With regrets.

Mr. Renwick: Maybe we could work some varying arrangements.

Mr. Chairman: It is normal for the justice committee that the chair does not recognize the clock, but if one person recognizes the clock, we stop at that point. As soon as one person draws attention to the clock at one o'clock, it is then adjourned.

Mr. Breithaupt: We should hear Mr. Rotenberg then, to know if we are going to proceed with the section or not.

Mr. Rotenberg: We have crossed that question--

12:50 p.m.

Mr. Stevenson: I have listened to all the comments from members and people appearing. I have considerable support for the point of view of the municipalities, but I have a fair bit of concern that maybe this bill is going a little too far.

Mr. Rotenberg has talked on a number of occasions about if and when Bill 11 proceeds and so on. He has not been as firm in some of his statements as I might have liked to hear. The bill has had first reading. Are you prepared to give a somewhat firmer commitment than I feel you have given up to this point on what will happen to Bill 11?

Mr. Rotenberg: Mr. Chairman, it is a government bill. It is certainly the government's intention to get Bill 11 before the House as soon as possible. As discussed with my critics, Mr. Epp and Mr. Breaugh, it is our intention to have a very fast second reading in the House and send it out to a committee, either this committee or the general government committee, for hearings on Bill 11 because the two opposition parties have so requested.

That will take place either over the summer or, the way summer is coming now, maybe early in the fall. If there is anything to add to the general legislation as far as video game licensing is concerned, it would be open for discussion at that time. It is certainly the government's intention to get Bill 11 through as quickly as possible because it is something we feel is long overdue.

Mr. Stevenson: It is certainly my concern that we are likely to see a number of private bills. If one passes, I can see a regular flurry of them. It would be my feeling that if Bill 11 could cover many of the things some of the private bills are likely to cover, it would be a better route to go.

Mr. Rotenberg: Can I ask you a question this way, Mr. Stevenson and members of the committee? If I could deal with clauses (a) to (f) in the Windsor bill individually, that may indicate the government's position.

As far as clause 2(3)(a) is concerned, "define one or more areas in the municipality..." We feel very strongly that should be done under the Planning Act and under the zoning bylaw. That is probably the major objection we have to this bill.

If it is done under licensing, any future video game operator would not have the right of appeal to the Ontario Municipal Board, as he would have at present. There is no question in our minds, despite what some of the solicitors may have said when we discussed the court case, that the municipalities have a power to prohibit or to regulate or to define video game arcades and to put them into specific zones.

As I said, the bylaw would take effect the day a municipality passes it unless it is rejected by the Ontario Municipal Board. The problem of pre-existing, or what was the word you used?

Mr. Revell: Retrospective.

Mr. Rotenberg: Retrospective bylaw, although it is not allowed, the McRuer report was very specific in indicating a legislature would have to look very closely at putting in retrospective legislation which would remove existing businesses. This is up to the committee. We have heard from existing businesses.

If you wanted to pass it under licensing, which we do not recommend, the question becomes whether you would put a retrospective clause in and, in effect, be able to put all the people out of business. You would have to make another notwithstanding clause because the present Municipal Act, where licensing is now, indicates you cannot make locations retrospective.

Mr. Renwick: If I may just interrupt; there is nothing retrospective about this bill as it stands at present.

Mr. Rotenberg: This bill, no. As it stands. The committee would have in its power to add an amendment. We would be very hesitant about doing that because, again, that would take away a power of nearing. On the matter of location, we feel the municipalities have the power under zoning. It has been used by every municipality in Metropolitan Toronto and others. It has been tested in the courts and we do not feel that clause (a) should go forward.

Clause (b) is in Bill 11 and as soon as Bill 11 passes, they can regulate hours of amusements.

We find clause (c) offensive because there is nothing criminal about arcades, to say a person under 18 years old may not be employed. I think it may be contrary to the Constitution and Charter of Rights. I think clause (c) should not be there.

As I have indicated, we will not support clause (d) as far as persons under age 16 being accompanied by a parent or guardian is concerned. We think that goes much too far.

As I say, we are considering--I have to be honest, we cannot give you a commitment at this stage--giving the municipality the

power under licensing, under Bill 11, to prohibit children under 16 during school hours. That is something we will be considering. It will be discussed as an amendment to Bill 11 when it comes forward.

The city of Toronto handled clause (e) under their zoning bylaw. It passed the Ontario Municipal Board. We question whether it should be done that way or should be done by other methods in the zoning bylaw.

Clause (f); we feel a fee should not be prohibitive or discriminatory, and we feel that fees probably should be per location. Even a fee per machine could be worked out, maybe under Bill 11.

Again, the fee would be a minimum fee to cover the cost of inspection, the cost of running it. It could not be \$100 per machine or something like that, which in effect, is trying to put people out of business.

Really what I am saying, Mr. Chairman, what we feel is that section 2 should not stand as part of the bill because the location part certainly can be handled today or tomorrow by any council under the zoning bylaw without the retrospect. The rest of it can or will be handled under the present Bill 11 on the existing legislation.

I may indicate, by the way, that the regulation of hours of operation is in the present Municipal Act. Although Windsor had a problem in passing a bylaw for amusement arcades, it is our opinion that had they written that bylaw somewhat differently they could license amusement arcades separately and regulate hours under the present legislation. They could not regulate location except under zoning.

So that, Mr. Chairman, is the government's position.

Mr. Elston: Does that mean that you are not supporting the bill with respect to any part of the video portion of it, and that you are recommending that your members vote against those sections?

Mr. Rotenberg: I am recommending that all members vote against section 2, because most of it can be handled in other ways.

Mr. Mitchell: I do not wish to take up a lot of time, but I will probably have to recognize the clock.

I believe we are scheduled to sit as a justice committee in July. Is there any possibility, should this bill not be finished, that it could be dealt with on the first or second day of the sitting in July?

Mr. Breithaupt: We can do it in 10 minutes now.

Mr. Renwick: I want to throw out a couple of things: what the parliamentary assistant has held out is that Bill 11, comme ci comme ça, will provide an adequate way in which to deal with all of the items--deal with the question of amusement arcades, except with respect to clause 2(3)(a), which should be done under the Planning Act.

Mr. Chairman: Excuse me, Mr. Renwick, I misunderstood. First, I thought you were going to assist the chair and others with regard to Mr. Mitchell's--

Mr. Renwick: I was trying to. If you will just give me a minute, that is what I am seeking.

Mr. Chairman: You are addressing Mr. Mitchell's comment.

Mr. Renwick: Mr. Mitchell was suggesting as to when we are going to deal with the bill.

Mr. Chairman: And about the first two weeks in July when the justice committee is scheduled to sit.

Mr. Renwick: He threw that in as a suggestion. I wanted to throw in a comment about his suggestion of it, and put in an alternative proposal to you.

The minister, for practical purposes, is saying that before this House rises and this session adjourns at Christmas time or thereabouts, Bill 11 will--I am not saying you can guarantee it will be passed, but the intention of the government is that the bill will be in law by the end of the year.

Rather than to defeat this clause, which now will be defeated because of the statement made by the minister--I have been around a while, and I can count.

Mr. Elston: The experience of committee work. Even for some of us who have been here for a year.

Mr. Renwick: Is it too much of a compromise to suggest that we simply not call any further portions of this bill, and that we stand the bill down at this time? If it appears, when the House comes back, that Bill 11 is not going to be passed, this committee can return to the bill at that time. That is why I was trying to address the question of July.

I can see no point in meeting in July because the same result will follow as if we called the section now on the bill. I would not want to inconvenience all the members of the public who wanted to come again, to hear us go through some ritual in July, which would not be any different than the ritual we could go through in the next four or five minutes.

It would make sense to me--I think we owe it to the city of Windsor and to all the people who have come here, and the long discussion we have had--to bring this bill to a conclusion during this session, but not necessarily now.

If Bill 11 is not going to be passed, with whatever input we will receive from the public on that bill--and this question will obviously come up front and centre when that bill goes out to committee, about how it is to be done and so on--I would suggest we simply stand the bill down now, keep it on the agenda of this committee and commit ourselves to dealing with the bill one way or another.

1 p.m.

Mr. Mitchell: Mr. Chairman, I am speaking for myself, but I suspect that the suggestion Mr. Renwick has made is a good one. I suspect that, if he were to make it a motion, we might resolve our dilemma.

Mr. Breithaupt: If the committee adjourns without doing anything further on the bill then it will just stay.

Mr. Chairman: Am I to take it that that was a motion by Mr. Renwick?

Mr. Renwick: It was not so much a motion, it was just a suggestion for discussion as to how we should proceed. Mr. Swart raises what will happen to section 1 of the bill.

Mr. Chairman: That was carried, as amended, in the last sitting.

Mr. Renwick: It would be in limbo as well.

Mr. Swart: It would be in limbo, all right.

Mr. Chairman: That is right, the entire bill would be in limbo.

Mr. Swart: This is a very real concern.

Mr. Eves: I was just going to make that point. I think we should hear from the solicitor for the city of Windsor as to what he would prefer to happen with respect to section 1 of the bill, and the bill in its entirety. If we do stand down the entire bill, we are really impeding progress of section 1.

Mr. Breithaupt: Is it practical to withdraw sections 2 and 3 from the bill in order that the bill could be reported with at least section 1, if that is what the city of Windsor would wish?

Mr. Renwick: Does Mr. Kellerman understand what is being put in front of him?

Mr. Kellerman: Mr. Chairman, on this matter, it is certainly the wish of the city that section 1 in its truncated form go forward. Our question then is how do sections 2 and 3 come back before this committee?

Mr. Chairman: If they are stricken--and Mr. Breithaupt suggests that they be stricken--they would have to come in the form of a new bill to come before this committee again.

Mr. Breithaupt: That was my point. Since it is apparent that section 2 is not going to be supported by the committee, is section 3 a subsidiary to the present section 2 or is it a separate matter?

Mr. Kellerman: Section 3 stands on its own feet.

Mr. Rotenberg: If I may indicate, the government has very violent objections to section 3 because of the nature of it. It allows Windsor to cancel licences without a hearing.

Mr. Breithaupt: It looks as though the only way this bill will pass is in the form of section 1. If you want section 1 today we could agree to deal with it. On the other hand, if you would rather wait and discuss these matters further, that is going to take at least some time and will not likely be before us until the fall.

Mr. Kellerman: Could I seek instruction on that for a moment?

Mr. Chairman: Might I also, in fairness, point out that this private bill has had only one reading in the House. It has gone to the committee. The committee would report it back in some form. There is no guarantee of how quickly legislation of any kind is going to speed through the House.

Mr. Rotenberg: If section 1 goes forward by itself, it would be called and go through without debate. It would certainly be called before the energy one.

Mr. Kellerman: If I could seek instruction briefly, Mr. Chairman.

Mr. Renwick: I do not think we need to put Mr. Kellerman on the spot.

This committee will be meeting again, and he could always convey to the clerk whatever instructions he wanted with respect to the bill--that is, to keep the bill on the agenda of the committee, which is one alternative, or to advise on whatever your instructions are regarding the deletion of sections 2 and 3.

Mr. Breithaupt: That is true, because if we had those instructions or those comments--for example, if the committee was told that sections 2 and 3 were going to be withdrawn, the bill could pass without hearing further from anyone. That would certainly be a convenience to the people who have come from Windsor.

On the other hand, if the solicitor wanted the bill to continue and just stand as it is now, he could decide that too, so that we can convenience people if it is at all possible.

Mr. Swart: Mr. Chairman, with regard to that procedure, I am inclined to feel that it is a reasonable procedure. It seems to me that we have come very nearly to the end of the discussion on this bill. To leave it for the fall seems to be an unreasonable application in any respect.

I know the difficulties, Mr. Chairman, but it seems to me that regardless of what takes place, we should finalize this bill this spring. I can also see what the final form is going to be. But even if that took another half hour, another hour of this committee--and I know the problems in delaying even, say, the Consumer and Commercial Relations estimates.

We have to get approval through the House, but it might be the wise thing to do. We are not likely to finish Consumer and Commercial Relations estimates this spring. To me, it is not as crucial to start them exactly at that time as it is to finalize this bill.

I know we have postponed them two or three times, Mr. Chairman, but they are not as crucial to as many people as this bill. I think we all agree with that in this committee and I would like to see this finalized. We may be able to do it in five minutes.

Mr. Kellerman: I understand that I have the option of allowing the bill to continue, and then later of advising the clerk as to whether or not sections 2 and 3 are withdrawn and whether section 1 can go forward.

Mr. Chairman: Yes, that is correct.

Mr. Breithaupt: This committee could deal with that on its own without hearing anything further from anyone.

Mr. Kellerman: Yes. I would ask that I be granted that option, Mr. Chairman.

Mr. Chairman: Fine. Can I ask the committee that, if it is indicated back by Mr. Kellerman to the clerk or to the chair, and since section 1 as amended has been carried, I might therefore have your concurrence that the preamble would carry-- Not automatically?

Mr. Renwick: No, we would have to deal with it in committee.

Mr. Chairman: Thank you. Adjourned until tomorrow following routine proceedings.

The committee adjourned at 1:08 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CITY OF TORONTO ACT

WEDNESDAY, JUNE 16, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Stevenson
Philip, E. T. (Etobicoke NDP) for Mr. Swart

Clerk pro tem: White, G.

Witnesses:

Fink, R., Private Citizen
Gardner, K., Private Citizen
Murphy, R., Private Citizen

From the City of Toronto:

Fram, M., City Solicitor
Gee, M., Alderman, Ward 11
Johnston, A., Alderman, Ward 11
Tomlinson, P., Program Manager, Policy Section, City of Toronto
Planning and Development Department
Vanderwagen, J., Assistant to Alderman Johnston

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, June 16, 1982

The committee met at 10:09 a.m. in committee room 1.

CITY OF TORONTO ACT
(continued)

Resuming consideration of Bill Prl3, An Act respecting the City of Toronto.

Mr. Chairman: I see a quorum and call the meeting to order.

Before we carry on with Bill Prl3 may we refer to couple of other matters.

First, we have three bills--may I call them reviver bills--typed to come up. We need five days' notice. Is it possible that right now we can agree on next Wednesday at 10 a.m., or Thursday or whatever day at a definite time?

Mr. Mitchell: Mr. Chairman, how does that conform with the schedule of sittings we have established for the balance of the estimates? I cannot recall precisely, since we have recently deferred the Ministry of Consumer and Commercial Relations estimates until the fall.

Mr. Chairman: We would probably be starting with the Ministry of the Solicitor General that morning, subject to something we are going to talk about a little later with Mr. Spensieri. But perhaps these bills, revivers and so on, should not wait until July.

Mr. Mitchell: I recognize that, Mr. Chairman, just so long as we are able to make the move compatibly with the Honourable George Taylor, who is waiting in the wings to bring his estimates forward.

Mr. Chairman: I understand there are no objectors and that the legislative counsel are happy with these bills and that they are routine. I would like to suggest that at 10 a.m. we set these private bills, then start the estimates at 10:30 a.m.

Mr. Renwick: On Friday?

Mr. Chairman: No, it will be on Wednesday, because of what Mr. Spensieri will be bringing up.

Mr. Renwick: On Wednesday of next week.

Mr. Philip: Mr. Chairman, as someone who is not a regular member of this committee but is only here for this one particular bill, since we do have other witnesses on this bill, and since it is very important that it be reported back to the House before adjournment, will there be other sittings scheduled by this committee to finish up the bill?

Mr. Chairman: You are jumping the gun by about three items. I was going to bring that up.

Could we get the matter of those bills out of the way?

Mr. Mitchell: Wednesday morning at 10 o'clock.

Mr. Chairman: Wednesday morning at 10 a.m.

The second matter is we had scheduled the estimates of the Solicitor General (Mr. G. W. Taylor) to start this Friday. You will recall that he moved out of place with the Ministry of Consumer and Commercial Relations, because of Mr. Mancini. Mr. Spensieri is requesting that we do not start with the Solicitor General's estimates this Friday, but wait until Wednesday to start them.

Mr. Spensieri: It is not a request as such, Mr. Chairman. By virtue of a call that was placed yesterday to the Honourable George Taylor by our House leader, there has been a common agreement to commence on Wednesday, subject of course to the chair's agreement.

Mr. Mitchell: Not that I am going to oppose it, but I would like to know the rationale behind the request.

Mr. Spensieri: I understand from Mr. Breithaupt that the Justice policy estimates might require the some time on Friday to wrap up, consequently we would not be through with them.

Mr. Mitchell: I see, as the critic in the House, you would not-- That is okay. I think that is fair enough.

Mr. Chairman: We have two hours and 25 minutes left on Justice policy. It is quite correct that it might be difficult to get that in on Thursday. So is that agreed?

I see that it is agreed that we start the estimates of the Solicitor General on Wednesday at 10:30 a.m.. On Friday we finish up the Justice policy estimates. We will only have an hour and a half at best on that day, Friday, anyway.

The next matter: we have four witnesses this morning and we have 12 other groups that wish to speak to us, the first of which is the Toronto Real Estate Board with its conclusion, which may not take very long. But there are 11 others which have asked to be heard.

Mr. Philip has mentioned the problem of what we do with that bill, keeping in mind what is happening in the House; also keeping in mind that, if the House breaks, I know that this committee is set to meet the first two weeks of July, intensively, all day, on election expenses, or whatever the House has scheduled for us. So obviously that is our mandate for those two weeks.

What do we do if the House continues into July or through July? What do we do if it ends at the end of June? What do we do with these 11 or 12 people who wish to speak to us on this bill.

Mr. Mitchell: Based on the adjustment that we have just made, not to begin the Honourable George Taylor's estimates on Friday, what had you planned for Friday? Since there are, as you say, about 12 more groups that wish to speak, had you planned to schedule them in on Friday?

Mr. Chairman: Two days from now?

Mr. Mitchell: Yes.

Mr. Chairman: No, because if, for some reason, we are held up in the House and do not get even an hour and a half or so of the Justice policy estimates tomorrow--and we have an hour and a half at best--we will be hard pressed to finish up Mr. Sterling's estimates on Friday.

Mr. Mitchell: Fair enough, Mr. Chairman. I think this side is no different to Mr. Philip on this. We are concerned about this bill. But, based on the information we are getting here this morning, I do not think we are capable of making a judgement today as to when this bill can be dealt with.

I would suggest that you, as the chairman, along with the clerk, have to discuss the matter. It may even have to result in a direction as to additional sitting times. I think that is something you will have to resolve and report back to this committee. I do not think we are really in a position--

Mr. Chairman: Are you suggesting, like Mr. Renwick, that I am handsomely paid to do that type of thing--

Mr. Mitchell: No, first off I would not say you are handsome, and second, I do not say you are paid; but I do think you are the only one who can resolve the problem, Mr. Chairman.

Mr. Renwick: I would suggest we defer this discussion until about 12:45 p.m. today and get on with the people who are presently here, and see what progress we make. Perhaps, for 15 minutes at the end of the morning, we could complete that question of the agenda.

Mr. Mitchell: Not to prolong it, but during that 15 minutes we may be in the midst of a witness here. I would rather leave it that you would accept the chairman having to resolve the problem, and try to--

Mr. Renwick: No, I do not want the chairman to resolve this problem.

Mr. Spensieri: We wish to assist you.

Mr. Mitchell: That is unusual.

Mr. Chairman: They wish to offer me assistance--no faith. Thank you, Mr. Renwick.

We will carry on with the witnesses. Alderman Michael Gee and

Alderman Anne Johnston. You are both ward 11. Do you wish to speak together or separately?

Alderman Gee: She is not here, Mr. Chairman.

Mr. Chairman: That answers that question.

Alderman Gee: Which I thought was the diplomatic way of answering it.

Mr. Chairman: Take a seat. The chair, not being from Metro Toronto, does not understand any of these comments. Would you carry on?

Alderman Gee: I noted, from reading the transcript, that there may have been some confusion. I saw some remarks to the effect that I was expected to be here the first day of your sittings in respect to this bill but no one told me about it, so until subsequent to that I had not been in touch with the clerk of the committee.

Mr. Chairman: Do you have any written or prepared notes?

Alderman Gee: No, I do not.

I think some members of the committee may be aware that I opposed this bill when it was in council. I continue to oppose it in its present form. I argued at that time that I thought the cure was worse than the disease and that it just might be lethal to the patient.

I think it is inimical to the interests of tenants in the longer term. I am not going to go into those questions of fundamental property rights and all that nonsense; I am sure you hear enough of that in the course of the testimony of other witnesses before you. I do think quite frankly, that in the longer term the interests of tenants are adversely affected by a provision such as this.

I have read the transcripts up to date. I know you have had some talk about potential loss of property values. I do not think there is any doubt of that. I think that it does, however, deserve some further study. The imposition of the rent review process some years ago clearly reduced the investment value of property. I do not think anyone is going to argue seriously about that.

10:20 a.m.

This bill, I think, if it were introduced in this form, would extinguish the development rights that exist in a property and thus obviously reduce the value to the present value of the income stream. That in many cases, and probably in most cases, would be less than the existing debt.

I think the impact on landlords is obvious in those circumstances, but what happens to the tenants? As a matter of fact, I don't think anyone has ever examined what that does to the

assessment base of the city. That might be worth examining at some point in this whole process.

What is the impact of that on tenants? I would suggest to members of the committee that it will be extremely adverse. The tendency of landlords in the circumstances will be to allow the buildings to deteriorate. Not all landlords will do that, but a significant number of them will do so.

You have had the suggestion made, I believe by the mayor of Toronto, who was talking about our very excellent and aggressive staff of building inspectors, that they are going to go out there and make sure that this does not happen. This is no reflection on that excellent and very aggressive staff of building inspectors; that part is true. But anyone who has had any experience trying to get work orders performed and in trying to stay the gradual deterioration of buildings these days will know it simply does not happen that way. That is a sort of Polyanna way of looking at things and it is still not going to alter, however aggressive they might be, the gradual and inexorable deterioration of the buildings; and the tenants are the ones who pay the price for that.

Incidentally I might say that, of all the representatives from the city of Toronto who have addressed your committee, or will, I am the only bona fide tenant in the whole bunch of them. I appreciate all these things that everyone else is doing for me, but I would like you to know that I am looking at the thing at least from a tenant's point of view--as a tenant and not as a home owner.

The second point I would like to make is that the impact of this if passed would be automatic and, I suggest to you, universal. The power given under this bill will be exercised. There is no question about that. It will not be exercised in some sort of spirit of discretion. Believe me, I know my colleagues on city council; I know them. Susan Fish knows them just as well as I do, and there is no question that it will be exercised and at virtually every opportunity that arises.

Mr. Renwick: You are not suggesting bad faith?

Alderman Gee: No, I am not suggesting that, not at all, Did anyone suggest otherwise, that it would not be exercised?

Mr. Renwick: Yes, you did.

Alderman Gee: Who?

Mr. Renwick: You suggested that if we passed a bill granting a discretionary power to the city of Toronto they would arbitrarily not exercise the discretion; and that is bad faith.

Alderman Gee: Mr. Renwick, the power is discretionary, or permissive if you like, under the Planning Act, to withhold a demolition permit where no building permit has been received. It is within the power of the city to permit demolition, even where there is no building permit. It is, of course, not possible to attach the normal conditions in those circumstances. But let me tell you the number of times that discretion is exercised is virtually nil.

The only reason I say that is to enforce the point that I am trying to make, that it will be automatic and universal. In other words, the impact on the landlord will occur in virtually every case.

There are certainly a lot of properties, I guess, small apartment buildings in R-2 zones, that probably do not have any development rights because they are a legal nonconforming use, and if the building disappeared the only thing that could be built would be, perhaps, a couple of single-family houses.

Mr. Spensieri: May I interrupt there? You are really saying that the philosophical and political frame of mind of your colleagues would be to withhold development permits willy-nilly. Is that what you are saying, that you--

Alderman Gee: I am saying that the power asked for in this bill, if given, will be used in virtually every case.

Mr. Spensieri: Because of the philosophical and political inclinations of your colleagues or because of bad faith?

Alderman Gee: I do not think it is bad faith at all. That is a red herring running here. That is the political reality of the matter.

At any rate, I keep saying that the impact on landlords will be immediate. The impact on tenants will be just as large, but not quite as immediate.

Our real problem, it seems to me, is that we have a shortage, and what we are doing is going around and making the shortage worse. We are not doing anything that is particularly positive at this level of government, the federal level, or at the one I represent, to encourage the development of this kind of housing.

Perhaps that is not totally within the powers of government, but there is no doubt that rent controls are one of the things that discourage more rental development.

They are not alone: high land costs, high interest rates, labour and material costs are certainly part of that equation, and not the least are restricted zoning and an official plan that in many cases does not respond to the problems we face. That is really in our bailiwick, and maybe it is something we could or should be doing, but are not doing.

This kind of thing will retain the stock, but it will ensure that it will remain static. The problem with that is that you get declining general conditions.

You have to remember that the useful life of an apartment building, the kind of building we are trying to protect, is probably about 40 or 50 years. Time will ultimately run out--when it is beyond being fixed and it has to be replaced.

A second aspect of the fact that it remains static is that you satisfy the present tenants, which I want. I can adopt a sort of

"I'm all right, Jack," attitude about this thing, but where will the kids go? Where are they going to rent anything? Because there is no more, and there is a declining stock. I think that is a very real question.

There is no time limit on any of this thing. There cannot be a time limit because there is no initiative to change the situation for the better.

If you say, "Look to the public sector," fine, I am a great booster of the public sector's participating in the housing market, particularly in low- to moderate-income housing. The fact is that in Toronto, in the assisted housing program, we will have about 3,800 units, and that is not going to meet anything near the kinds of needs we have.

What I have said, in summary, is that the impact on property values--in addition to the impact it has on landlords--is very adverse to tenants in the fact that you have deteriorating buildings.

This kind of thing creates a further obstacle, if you like; it drives another nail in the coffin that contains the expectations of future rental development. Furthermore, it locks us in with a potentially deteriorating stock, and all of those have an adverse effect on tenants.

Having said all that, I am going to confound you by suggesting that I am not going to ask you to take this bill and throw it out, because the fact is that we have to do something. I just do not happen to think that this is it.

If there is a housing shortage, and I am not at all sure that this is the case, the fact that there is or isn't is irrelevant in this context, because there is no question that there is a very serious crisis in the availability of low- and moderate-income rental housing.

I say, "If there is a housing shortage," because I heard the other day that there are 26,000 houses for sale in Toronto and it does not sound like a shortage to me. If you are looking for an apartment, I can make one phone call and get anyone 50 two-bedroom apartments in one building, as long as you want to bring along \$900 to \$1,200 a month to pay the rent. Clearly there is not an overall shortage except in this particular circumstance. We have got people--

10:30 a.m.

Mr. Elston: Just a second, I am losing something here in the translation. If I can only afford to spend \$350 or \$400 a month--

Alderman Gee: You have a problem.

Mr. Elston: --how in the world can you tell me I have access to places that cost \$900 and \$1,200?

Alderman Gee: I did not suggest that. I am saying--

Mr. Philip: Why would you move something that would not stand up in court? Is that not irresponsible on your part?

Alderman Gee: That was my own speculation. I am not sure it would; I would certainly try to argue it would. Our solicitor did not indicate to us at the time that he thought it was not worth passing.

Mr. Spensieri: Every developer wishes to develop something to get a larger number of units. You would not even need a bylaw for that really.

Alderman Gee: That has not been our experience. The developers have repeatedly torn down more units than they have subsequently rebuilt.

Mr. Spensieri: If not the units, then overall income. The real crux of the problem is what you are replacing it with, what price range.

Alderman Gee: Yes, that is true.

Mr. Spensieri: Can you address yourself to that?

Alderman Gee: Well, if I had a solution to the whole problem I would tell you to get rid of this and I would give you the solution. I do not have it. There is a partial solution to the point that I think you are aiming at. It would be under present market conditions, at least in so far as the developer perceives them, that he would replace that building with--the fact of the matter is that they replace it with less units, but they are aimed at a different market, they are aimed at the luxury market.

I am not so sure now far some innovative changes in our zoning might be able to discourage that by, for instance, the application of unit size.

Mr. MacQuarrie: Or bonusing.

Alderman Gee: Or bonusing, which we have used and used successfully on occasion.

When Alderman Sheppard was here, I noted in the transcript--

Ms. Fish: He is here again with us.

Alderman Gee: Good. I thought you were supposed to be in court today.

Alderman Sheppard: I won.

Alderman Gee: Congratulations.

When Alderman Sheppard was here, I believe the first thing he said--and this is the most important aspect of the lack of this kind of legislation--was that it caused a tremendous dislocation among the tenants who are evicted when a person is about to tear down their building.

I agree with that. I think he is entirely right. That is the major problem--at least, it is a major part of the problem. I think that is at the base of the fear that people have in these cases, and it has been demonstrated by the busloads of people coming down here to urge you to pass this bill.

To some extent, the dislocation aspect of that could be solved by forcing the developer to have vacant possession of the building before he can apply for a demolition permit. By vacant possession, I mean that 100 per cent of the building is vacant.

That will create problems, I suspect, in landlords harassing tenants to leave. In anticipation of that, it may be necessary to beef up some of the provisions in the Residential Tenancies Act that could be brought into play to ensure that if there is going to be a dislocation, the developer should resolve the problem rather than the rest of the community.

You have to ensure that the only way he can do it is if he locates people where they want to be at the prices they can afford to handle. This has been done.

Mr. Spensieri: As a cost of development?

Alderman Gee: I guess you would put it down as a cost of development.

Mr. MacQuarrie: It then introduces as one of the exceptions in the bill. We have two exemptions at present: "(a) unsafe within the meaning of the Building Code Act," and "(b) built to a residential density which is 50 per cent or less of the maximum residential density which the council may by bylaw permit under the official plan for the city of Toronto."

Would you introduce that as another exception?

Alderman Gee: That is what I meant.

Mr. MacQuarrie: That is, the building being vacant?

Alderman Gee: Yes, that is what I am really recommending to you. I am recommending it for your consideration. It appeals to me as a reasonable idea.

This gentleman is concerned about it being added to the cost of development. The cost is horrendous anyway, and it would seem to me that the person going to benefit most directly should be paying that cost. I do not have any problem saying to the developer, "You do it." Members of our council are aware that this has, in fact, been done in several cases.

Mr. Chairman: Excuse me. Mr. Brandt, I believe, has been very patient.

Mr. Brandt: I have just a couple of questions. Part of them have been answered.

It was with regard to the earlier bylaw that you and Mr. Sewell apparently had some hand in getting passed. I was wondering if, in fact, you had looked at the option of perhaps replacing units on a site other than the specific site where the demolition was to occur. I am thinking of a large land owner who may have land in some other part of the municipality.

If, in fact, your intent is to replace 50 units being demolished with hopefully 51 or more, could it take place within the context of that bylaw on another site, or would it be site specific?

Alderman Gee: I suppose it could. Since the purpose of that concept is to expand existing stock, it really would not matter if it were on another site within the community.

10:40 a.m.

Mr. Brandt: You could have a situation where a higher and better use, or the best use, for that property may be something other than residential. It could be a commercial office building or something of that nature.

Alderman Gee: That is right. That is quite possible.

Mr. Brandt: Where a landlord or land owner would be in a position to move to some other area where he might have an inventory of land and was prepared to replace the demolished units--albeit we still have the problem of pricing, I appreciate--would that be something that could be carried out within the context of the bylaw you have already passed?

Alderman Gee: I think it could be done. It is certainly worth looking at.

We have had similar experiences, quite recently, in the case of large developers. Large developers made agreements with the city to provide a certain amount of assisted housing that would subsequently come within either the co-op or the municipal nonprofit programs.

Mr. Philip: But these would all be cases where they were applying for rezoning, or for some kind of authority which they did not have, not for doing what they already have the right to do.

Alderman Gee: I am not sure that I follow. I am just trying to point out that we have agreed in some cases.

There was one specific case just the other day where the developer had the right, and still does, to build a large number of residential units, some of which had to be assisted. He is, with our agreement, putting the assisted component on a neighbouring property. He did not have the right to do that without our concurrence.

Mr. Philip: Did he have the right to build on that site a number of units without any concessions to you?

Alderman Gee: No, he did not.

Mr. Philip: So it was a trade-off?

Alderman Gee: It was a trade-off, yes.

Mr. Philip: What relevance does that have to the kind of thing that this bill is addressing, where a landlord has the right to demolish his own building at the present time and put up whatever he wants as long as it is in keeping with the present zoning?

Alderman Gee: The question asked was if we had in this bill or in some other form a provision that one cannot tear down without putting up the same or a greater number of units. The question was, do they have to be on the same site or could some of them be on a different site? I said that I saw no reason why they could not be on another site.

Mr. Elston: Could I ask you to explain something to me? If a developer is to get vacant possession, as one possible alternative or one way of going about this, if he is to find, maybe as a component of that, a relocation area for these people at the price they want to pay and in the area they want, and we have a crisis right now in that level of housing, how in the devil are you ever going to find any place to put these people? How are you going to deal with the dislocation?

If you are talking about a solution or a remedy that is worse than the disease, that has got to be, I think, one of the silliest suggestions I have ever heard.

Alderman Gee: Well, it has been done. It has been done within the past few months on at least three buildings I know of.

Mr. Elston: Which ones are those?

Alderman Gee: Have you got a list?

Mr. Elston: No, but the three examples would be welcome here.

Alderman Gee: The first one that comes to mind is 155 Balmoral Avenue, a 48-unit building for which a demolition permit was issued to build eight townhouses. There were no tenants in the building.

Mr. Elston: Were they relocated by the developer?

Alderman Gee: They were relocated by the developer, yes, presumably at his expense, but the tenants were certainly relocated in a manner satisfactory to them.

Incidentally, on that one, because I think it has been mentioned to you before, it was included among the 900 units that were threatened. That situation has since been altered. That developer is in the process of tearing up the building permit and surrendering the demolition permit so that those 48 units will be effectively returned to the rental stock.

Another one was on Hazelton--I think it was 44 Hazelton--the same thing. Crescent Road is another one.

Interjection: And these were all taken on as developments.

Mr. Philip: Mr. Chairman, on a point of order.

Mr. Chairman: It is quite correct. We have been very lenient. Mr. Philip has brought to my attention that we have been interspersing our questions in a disorganized fashion. I think we should let Mr. Gee finish.

Alderman Gee: I am just about finished.

Mr. Chairman: No, we are not critical of you in any way. If there is any criticism, it is of the members of the committee. You finish your presentation and then in order they will ask you to expand and so on.

Alderman Gee: I had pretty well finished, Mr. Chairman. I am simply suggesting that if you add the kind of qualification I am suggesting--and I am not suggesting they are the only ones that can be added; there may be others I have not considered--it takes away the universality of the thing.

It gives the possibility where there is a purchase and sale and there can be some element of certainty that the whole thing will not be frustrated in an arbitrary fashion. There are aspects of this that I think you have dealt with before with other people and I do not want to go into them. I just think it would improve the application of the bill.

However there is one suggestion I would like to make finally. If it does pass in its present form, I would urge you most sincerely and strenuously to re-examine the provisions of the Residential Tenancies Act that provide for renovations of existing apartments. I suspect that if that remains or is pursued by landlords or developers to be the only avenue by which they can somehow realize a greater return on investment, then that particular idea will become an epidemic.

Mr. Chairman: Mr. Philip does not agree with you.

Mr. Philip: Will you repeat that last statement?

Alderman Gee: I am saying that if this bill passes in its present form, I would ask you to take a new look at the Residential Tenancies Act provisions that apply for the eviction of tenants for major renovations of apartment buildings. That is one way of taking a building out from under rent control and I think it would become a very popular thing. It is now, to some extent, but not to the extent it would become if this bill were passed and no demolition were permitted.

Mr. Philip: It is good to start off with a witness on a point on which we agree. It is for that reason they are using the Landlord and Tenant Act to remove buildings from rent review. It is

for that reason I have been pressuring the government for certain amendments and have introduced private members' bills that show exactly how they could deal with that. I am in agreement with you on that.

I have a question here. I had better wait until it quiets down a bit.

Mr. Chairman: I would suggest you carry on, Mr. Philip, because it may be a few minutes, judging by a few weeks ago. I believe the people are being very quiet.

Mr. Renwick: Much quieter here than in the House.

Mr. Philip: You are suggesting if this bill is passed, that somehow buildings will be allowed to deteriorate.

Alderman Gee: I think they will, yes.

Mr. Philip: Are you also aware this was the very argument that was used to try to convince this Legislature and a committee of this Legislature not to pass rent review, because buildings would be deteriorating under rent review?

Alderman Gee: I am aware that argument has been used. I think to a very large extent buildings have deteriorated since the introduction of rent review.

Mr. Philip: Then you are not aware of the Ministry of Municipal Affairs and Housing study that shows that is utter nonsense. There is no evidence that suggests that has happened under rent review.

10:50 a.m.

Alderman Gee: No, I am not aware of that study. However, I am aware, as a tenant, of the extent to which in my own building this has deteriorated since the introduction of rent review. I have never heard a tenant of a building anywhere suggest that his or her building is not less than it was when rent review came in.

That is not an argument, as far as I am concerned, in favour of removal of rent review. I am simply saying that is a fact.

Mr. Philip: Do you live in your own ward?

Alderman Gee: Yes, I do.

Mr. Philip: Then you are your own constituent, so to speak.

Alderman Gee: Yes.

Mr. Philip: If the building you are living in is deteriorating so badly, why have you not used the extraordinary powers you have under the City of Toronto Act to force repairs for yourself as a constituent and for other people in your own building?

Alderman Gee: Mr. Philip, you are putting words in my mouth. I did not say my building was deteriorating so badly. I simply said there was a degree of deterioration and there is not a tenant in the building who would not agree with me.

Mr. Elston: It is getting older.

Alderman Gee: It is getting older, of course, but the level of maintenance is not what it was.

The extraordinary powers to which you refer are rather interesting. I have had occasion, in response to tenants of other buildings, to try to get something done about conditions they considered to be really quite serious, and I agreed with them.

Quite frankly, those extraordinary powers are not much good, Mr. Philip. It is very difficult. You can slap work orders on things until you can paper the building, and it does not seem to do a heck of a lot of good.

Mr. Philip: But you have the power that no other municipality has to seize rents.

Alderman Gee: I certainly feel badly for the others.

Mr. Philip: You can seize rents.

Alderman Gee: Yes, we can, but by the time we can bring that machinery into place the ruddy building is falling down. It is simply not very effective. You can talk about the powers that are in the bill. I am talking about the practical realities of dealing with them. It does not work very well.

Good heavens, we have had one building in my ward where I had the owner in the courts three or four times for failure to provide heat. I think there was a \$25 fine once; the other times the charges were dismissed.

Mr. Philip: Maybe the problem is to increase your process or effectiveness before the courts.

Alderman Gee: It is not my process, Mr. Philip; it is your process.

Mr. Philip: You are the alderman. You are the one who is going after them.

Alderman Gee: No. I can do my end, but then I come up against the courts, and the courts are what I find most frustrating.

Mr. Philip: I can tell you that the aldermen in my ward and, indeed, myself, have been fairly successful with considerably less powers than you have in the city of Toronto at getting major cleanups of buildings. It can take two or three months, but they certainly do not continue to deteriorate after that period of time.

Alderman Gee: Well, if you have a problem with heat, three months is too long.

Mr. Philip: If you have a problem with heat, you know as well as I do that under the City of Toronto Act the health inspector can go in and immediately get the repairs done within one day. So it is nonsense to say three months.

Alderman Gee: And two days later it is down to 55 degrees in their apartments.

Mr. Philip: And you do it again.

Alderman Gee: You do it again and again, but that is not very satisfactory. That does not solve anything. That just creates more problems for the tenants. Sure, you are solving some of them, but goodness knows, the poor tenant is being harassed and in many cases, if he or she is older, having an awful time.

Mr. Philip: So you are suggesting that a landlord who would treat his tenants in that way would somehow treat rich tenants any differently when he gets a new building on the site.

Alderman Gee: Probably not, but I am simply responding to your suggestion that buildings do not deteriorate or have not deteriorated.

Mr. Philip: You seem to malign your own colleagues for the way in which they would exercise their discretion under this bill. Are you not aware of subsection 1(4) of the bill which allows an applicant to appeal to the Ontario Municipal Board?

Alderman Gee: Yes. I am aware of that.

Mr. Philip: Do you not feel that this gives a safeguard to the applicant?

Alderman Gee: Yes, I think it is some safeguard. I would like to hear how you are suggesting that the appeal would take place. On what basis would the appeal be taken?

Part of the reason I say that, given the power, this power would be exercised in every case, is that I see nothing that is going to change the number of units. If somebody comes forward with an endangered building, the demolition would be withheld. Why would it not?

Mr. Philip: It is spelled out in the bill in those instances where it would not be.

Alderman Gee: Do you mean the unsafe condition or the--

Mr. Philip: Unsafe conditions.

Alderman Gee: Maybe the legal people could give you a better idea, but my understanding of unsafe condition under the Building Code Act is that it is a very narrow interpretation. You do not declare something to be in an unsafe condition unless it is extremely unsafe, really falling down and is a danger to other people. There are usually no inhabitants in the building. It is not in a habitable condition; it is in an unsafe condition; it is a danger to people passing by, etc.

Mr. Philip: If this bill is not passed, how are you going to protect the middle income housing spot in your ward?

Alderman Gee: The most fundamental thing I said, Mr. Philip, is that we have to do something. We have to have some power like this. I think the power should be qualified somewhat. I am recommending the power of demolition control that is set out in the bill and I am simply suggesting a couple of ideas to ameliorate the impact of it, generally speaking.

Mr. Chairman: Mr. Philip, Mr. Elston has asked for time also.

Mr. Philip: May I ask two last two questions? I noticed in the last municipal election that your colleague in the same ward who voted differently than you did on this bill published her campaign contributions. I noticed yours were not published. Did you receive any contributions from developers?

Mr. Mitchell: Mr. Chairman, that question is completely out of order, in my opinion.

Mr. Renwick: Why is that?

Mr. Mitchell: You are talking, in my opinion, about what is strictly municipal in its orientation, if it is a necessity of their bylaw.

Mr. Philip: The bill is a municipal bill.

Mr. McLean: What has that got to do with the bill?

Mr. Mitchell: It has nothing to do with this bill.

Mr. Chairman: That has no part in here. Your next question, Mr. Philip.

Mr. Renwick Mr. Chairman, on a point of order: It is all very well to be upset because some kind of nicety is being disturbed. I think the question would quite properly have been out of order had Mr. Gee not put himself forward here as a bona fide tenant and it is very germane to the question Mr. Philip put.

If Mr. Gee had not come here putting the accolade around him that he was a bona fide tenant speaking in the interests of tenants, as well as in his position as alderman, then I think Mr. Philip's question would have been quite of order. But once having put--and using his phrase--"I am a bona fide tenant," then Mr. Philip's question is very germane to the question. It is not whether Mr. Gee did anything right or wrong. Developers can make contributions. That is the law of the province. That is fine. But it is a very appropriate question and it would not have been appropriate if Mr. Gee had not said, "I, Mr. Gee, alderman of ward 11, am a bona fide tenant." I ask you, sir, not to get carried away with something that may have offended the niceties.

Mr. Chairman: The chair is going to rule and it is not, Mr. Renwick, on the niceties. I see no connection between whether Alderman Gee is a tenant or a land owner and his election campaign or his contributions or any financial contributions. I see no connection, so I am going to rule that out of order. The chair can be challenged if you wish.

Mr. Renwick: I have great respect for the chair and I have great respect for you, sir, but I do not think I can do other than challenge your ruling in a situation like this.

Mr. Chairman: So be it. All those in favour of the chair's ruling, hold up your hands, please. Be it recorded there are eight. All those opposed? Two. The challenge to the chair fails.

Mr. Philip: The Liberal coalition works again.

Mr. Chairman: Mr. Philip, your second question.

Mr. Brandt: You are always such a graceful loser, Ed. You really are.

Mr. Chairman: Your second question.

Interjections.

11 a.m.

Mr. Philip: I would just like to know who this person is speaking for.

Mr. Brandt: He is speaking for himself as everyone else is who appears before us.

Alderman Gee: Mr. Chairman, may I just say to Mr. Renwick I did not claim to be speaking for anyone.

Mr. Chairman: I think perhaps it would be well enough to leave that subject alone, both on your part as well as Mr. Philip's.

Mr. Brandt: Let us move right along.

Mr. Chairman: Mr. Philip, your next question, please. You said you had two questions.

Mr. Philip: That is my last question.

Mr. Chairman: Fine. Thank you. Mr. Elston.

Mr. Elston: I was exploring some of the examples where developers had taken it upon themselves to relocate people who would be displaced by the elimination of building units. You mentioned 155 Balmoral Avenue, 44 Hazelton Avenue, and a place on Crescent Avenue when we were interrupted.

Alderman Gee: I do not know the address there.

Mr. Elston: Are you telling me those relocations were all done at the cost of the developer?

Alderman Gee: As far as I am aware, they were, yes. I do not really know, Mr. Elston. All I know is that by the time any application for a rezoning--I guess in all cases it would have been a rezoning--arrived, when the city first had any knowledge or experience with it, the tenants were not there, nor did we ever have--pardon?

Mr. Elston: There was a convenient lack of tenants.

Alderman Gee: A very conspicuous lack of tenants, yes.

Mr. Elston: Do you not know how they were removed?

Alderman Gee: I have no idea because, to my knowledge, nobody ever heard a complaint from them.

Mr. Elston: That is a little bit different from what you were telling me. You told me before that those people had been relocated by the developer, as far as you knew, to the satisfaction of the tenants.

Alderman Gee: As far as I know, because we never heard it from the tenants.

Mr. Elston: That is something different from what you are telling me now. Now you are telling me you do not know how they were relocated, how they were removed, or anything on those lines.

Alderman Gee: No. I am sorry. I do not mean to--

Mr. Elston: There is a difference.

Alderman Gee: I have to speculate to some extent that they were relocated to their own satisfaction because they did not refuse to leave and because they were not there when the applications for rezoning came along.

Secondly, as far as I or anybody else is aware, there was no evidence of harassment. You soon find out about that because at least some tenants--unfortunately, not enough of them--know what their basic rights are and they will inform others. So you do hear about that.

Mr. Elston: How recent are these examples?

Alderman Gee: Well, 155 Balmoral is certainly within the past year. It might have been since the beginning of this year. I am not sure. It might have been in the late fall. The same happened with the Crescent Avenue one. The Hazelton Avenue one was about a year and a half to two years ago, I would think.

There may be other examples too. These are ones I know about.

Mr. Elston: Is it true to say that the movement in large apartment buildings, in terms of getting tenants together, is a really rather difficult thing to do in the initial stages?

Alderman Gee: I think it varies from apartment to apartment, and it will also have a lot to do with events.

It is not hard at all, when everybody is threatened, as is the case with demolition. It is not too hard when you get an application for a significant increase in rents. It tends to be relatively easy to get a lot of people together. Sometimes what is difficult is keeping people together once the particular reason for which they banded together in the first place has subsided. It is sometimes difficult to keep the interest up.

Mr. Elston: You could speculate that the removal of the tenants from these apartments may have taken place over a period of months, extending maybe to a year or two beforehand.

Alderman Gee: Yes, that is possible.

Mr. Elston: Removal of a tenant, one at a time here and one at a time there, may be the reason why there weren't any complaints.

Alderman Gee: That is possible, but I suggest--

Mr. Elston: My speculation might be as on key as yours.

Alderman Gee: That gets pretty expensive.

Mr. Elston: Let's just cut that short. The real reason why I was asking you that was that I cannot see how it is going to be a feasible cost of development for someone to do as you have suggested, that is, to take all the tenants in the buildings they want demolished and relocate them in areas which gives them housing at similar costs and in similar areas. We have already heard you saying that there is a crisis at certain levels of rent.

Alderman Gee: Yes.

Mr. Elston: The reason I seized on these examples was that you had indicated these tenants had been relocated, as far as you knew, at the developer's expense in areas where they wanted to go and at good costs. Now we are back to a stage where we are not sure whether that took place.

Alderman Gee: I am pretty sure it took place. I cannot tell you where they went, and I really would like to know where they went because I would like to talk to some of those tenants and see what blandishments were offered. I really do not know.

Mr. Elston: The problem is that if we have a crisis at a certain level of rent, if there is a vacancy rate that is minute, to say the least, how are you going to relocate all the people from the buildings at that level?

Alderman Gee: Mr. Elston, I understand your point. Let me answer in a slightly different way.

I think it was about five or six months ago that the present Minister of Municipal Affairs and Housing asked me how I accounted for the fact that one third of the tenant population in Metropolitan

Toronto moves every year. Frankly, I cannot account for it. I was quite dismayed when he told me that. I did not think it was anywhere near that figure.

This suggests to me that people are playing musical apartments or something. I do not understand it, but it might provide a partial explanation of how one gets people in if the vacancies obviously take place. They are not recorded because they are never vacant for more than one day, two days or three days at the most.

There is one on Avenue Road, however. There is a one-bedroom vacancy sign out at a small building on Avenue Road which has been there all week. I do not know what has gone wrong.

Mr. Elston: Maybe it is too expensive.

Alderman Gee: I do not believe so. It is not one of the fancier buildings. My guess is that it would be around \$300 or \$350.

Mr. Elston: Can I ask you what you think about the difficulties tenants are having right now when units or buildings are taken over and converted into condominiums and things like that? Do you think that causes a problem for the tenants in Toronto today?

Alderman Gee: It causes every bit as much of a problem as the demolition except that in Toronto the city has a policy with respect to condominium conversion which is pretty rigid. There have been exceptions made to it, but for the most part they have involved very small buildings. There just have not been that many conversions to condominium.

Mr. Elston: What we are looking at with respect to this bill and with respect to development is a step-up of the rent charged on the units which are made available after reconstruction, or renovation or whatever.

Given the fact that you had told us there is a crisis in moderate rental cost availability, how are we going to satisfy the need for relocation of those people trapped in the area of only being able to afford so much housing?

Alderman Gee: That is my point. I am saying the cost of dislocation ought to be borne--and I am not just thinking of the financial cost, but that will be a major portion of it--by the person who is most obviously going to benefit. I suggest to you that it be the developer. Otherwise, it is borne by the community, by the municipality and by the people themselves to a much greater extent than anything else. The fact is that under the suggestion I am making if he cannot relocate them, he is not going to get a demolition permit. It is as simple as that.

Mr. Elston: Or if he was to get the demolition permit or whatever, maybe the new units would be made available to the tenants.

Alderman Gee: I have suggested to you that I do not think he should be able to apply for a demolition permit until he has 100 per cent vacant possession. The only way he gets that is by

satisfying the tenants who are there. If there are some people who have been there for 30 years and they do not want to move, no matter what the incentive, then he is dead in the water, as far as I am concerned.

11:10 a.m.

Mr. Elston: My feeling is that is an impossibility. If you take the idea that the people are living in a community which they have chosen, because they have grown up there or whatever, and if there are no vacancies within their means, it is just not going to work, no matter what kind of condition you impose on the developer. If you require the developer to subsidize the rental paid by the people who are displaced, then you have to tell me how long he is going to subsidize the rent being paid.

Alderman Gee: I simply said, and I think it would be a mistake to try to get into drafting all of that, that unless he can--

Mr. Elston: It sounds a little like that unless you use that bylaw you do not think it is going to stand up. Maybe your concept--

Alderman Gee: That has nothing whatever to do with this. What I am suggesting to you--

Mr. Elston: What has to do with that is that neither will be effective because it becomes an impossibility to carry through. We are looking here at something that does have a way of working, even though you do not think it is going to be applied very well.

Alderman Gee: I think it is a practical solution, but you do not agree with me. That is fine. I do not care if the developer faces the prospect of enriching people beyond their wildest dreams of avarice to get vacant possession. He has to satisfy them. How he satisfies them is not my concern.

He cannot satisfy them, if a person says, "I want to live for \$350 a month within this area and I do not want to be above the second floor," or something like that. Whatever it is that they want, then he has to find it or he is not going to get the demolition. That is my point.

Mr. Elston: What do you do with situations where some owners of buildings decide they will just not rent to seniors in the city of Toronto? Would that concern you?

Alderman Gee: It certainly would. I do not know of anybody--I have never heard that it--

Mr. Elston: If we could provide you with examples, would you move to eliminate that sort of discriminatory action?

Alderman Gee: It sounds illegal to me, I am not sure. If you can provide me with an example I sure would.

Mr. Renwick: It just happened yesterday.

Mr. Elston: It just happened yesterday, as Mr. Renwick says. It seems to me--

Mr. Chairman: Mr. Elston, I do not want to press you but Mr. Spensieri has asked for a little time and we do have more witnesses this morning. We do have to press on.

Mr. Elston: Okay, I will drop it there, Mr. Chairman.

Mr. Spensieri: Very briefly, Mr. Gee, you have read the reports of this committee and therefore this is no news to you, but we have had various witnesses who suggested minimum concessions under which they would approve this legislation. For instance, we had Mr. Lord suggesting--

Alderman Gee: I have not seen his submission on this--

Mr. Spensieri: I will summarize it briefly, but we already have two built-in exemptions: the unsafe building and the low density. Mr. Lord came along and said, "At least we should say that it does not apply to buildings where rent control does not apply." Then we had another refinement saying it should only apply for as long as the present rent control legislation, the automatic six per cent increase, is in effect.

Alderman Gee: The bill itself is linked to rent control too. As long as controls remain--

Mr. Spensieri: As long as rent review legislation prevails in Ontario. We have had suggestions to the effect it should cease the minute the six per cent automatic increase ceases. Now you are coming along and saying we should also include as an exemption vacant buildings, however obtained. Do you not see it disturbing--

Alderman Gee: I do not mean however obtained. There are ways of obtaining vacant possession of a building that I would not condone. I am not suggesting that at all.

Mr. Spensieri: My basic question is: do you not see a disturbing trend towards watering down of this legislation? Where do you draw the line? Also, if a builder or developer obtains a vacant building by making a deal with the present tenants existing as of day one, how do you reconcile the interests of future potential tenants who could have used this property?

In other words, simply because I make a deal with six or seven tenants, whether I buy them off or relocate them or compensate them financially, it still does not address the question of the loss of that stock to future potential owners of those units. We are looking at so many refinements to this thing, with all respect to you, that we are going to kill it. It is going to be useless.

Alderman Gee: Just to address that last point first, that is why I suggested you might consider the inclusion of the provision that you cannot tear down without building at least that many or more. That at least addresses itself to the question of stock.

Mr. Spensieri: In the same price range.

Alderman Gee: There are certain realities today. The fact is it costs about \$115 to \$125 a square foot to build a building these days, counting land costs, materials, labour and soft costs. It does not matter whether we do it at Cityhome or whether it is done for a condominium or anything else.

If it is a rental building, you figure out what the rent is going to have to be on a 600-square-foot, 550 or so, net cost, which would be an average one-bedroom. Tell me what that would be; it is going to be around \$700 a month. I do not know how you would do anything about that other than the way we are doing with Cityhome with written-down mortgages.

The tendency towards the huge unit, the 2,500 to 3,000-square-foot unit, which in many cases is replacing some of these older buildings, I think can be addressed in our zoning bylaws. Perhaps we should be thinking along those lines. At least we could have the units the same size. We might not be able to control what they are ultimately going to rent for.

Mr. Renwick: Mr. Gee, I am not at all clear in my own mind about what the present position is for obtaining vacant possession. You have thrown in these three examples on Hazelton, Balmoral and Crescent Road as having been done in some way which was beneficial to the tenants. Are you aware of what the present position is under the Landlord and Tenant Act for vacant possession?

Alderman Gee: Do you mean eviction?

Mr. Renwick: Call it what you want; getting vacant possession.

Alderman Gee: Under present circumstances the only way you can get it is if the tenant voluntarily gives up the apartment and moves out.

Mr. Renwick: My recollections are not that accurate.

Alderman Gee: If you are talking about evictions, that is another matter.

Mr. Renwick: I have a feeling you can get vacant possession under the Landlord and Tenant Act.

Alderman Gee: Yes, you can. You can do it if you are undertaking renovations that are of such a nature as to require a building permit. I suggest that is a section that is abused.

Mr. Renwick: All right, I just wanted to speak very briefly to that point. I gather that, apart from all the discussion and your presentation, you see an evil that has to be dealt with or do you not see an evil which has to be dealt with?

Alderman Gee: I did say about halfway through my remarks that I thought it was pretty clear we have to do something and this bill is--

Mr. Renwick: About tenants who are being dispossessed because of demolition of their building.

Alderman Gee: Yes. I fully subscribe to the basic principles of the bill. I am simply trying to tell you there are negatives involved. I went through them and I will not go through again. Those negatives can, I think, be dealt with by the suggestions I have made.

Mr. Renwick: All right, I want to come to that. I take it then that your position before this committee is that you fully subscribe to the basic principle of the bill.

Alderman Gee: I do.

Mr. Renwick: You proposed a couple of conditions which you felt would limit the exercise of the discretion and would impose conditions upon its exercise.

Alderman Gee: Yes.

Mr. Renwick: I take it those two conditions have to do either with vacancy on the one hand--which I believe I have answered from the point of view of my decision on this bill because of the provisions of the Landlord and Tenant Act permitting vacant possession to be obtained, so I do not think I want to impose that condition.

11:20 a.m.

Alderman Gee: I may have given you the wrong impression. You can obtain vacant possession but you cannot get demolition that way. You can obtain vacant possession by applying for a building permit and getting the building permit to do certain things, but that building permit will not permit you to demolish the building.

Mr. Renwick: What would stop you?

Alderman Gee: The building permit is to do specific things. You must carry out the plans that were submitted to obtain the building permit.

Mr. Renwick: At this point, that deals then with the question of major renovations of the building.

Alderman Gee: Major renovations, yes. You would have to make those major renovations. You cannot then come to us and say: "I have an empty building. I want to tear it down."

Mr. Renwick: I do not know the answer to that.

Alderman Gee: I am trying to solve the problem of the dislocation of tenants. What that does is dislocate tenants.

Mr. Renwick: I understand that.

Alderman Gee: It does not solve the problem at all.

Mr. Renwick: I understand that. I do not think that is an argument against the bill. The other condition you wanted to impose was some requirement that a developer or an owner could relocate the tenants in some way.

Alderman Gee: Yes, that is the same requirement, really.

Mr. Renwick: If that proposal was put forward on that basis, then he could get the demolition permit. Was that your other condition?

Alderman Gee: That is part of the same one. I have said he could apply for a demolition permit if he had vacant possession of the building. The vacant possession of the building can only be obtained in those circumstances by satisfactorily relocating all the tenants.

Mr. Renwick: But that would be if we passed the bill in its present form. That would be a discretion that council could exercise in any event under the bill.

Alderman Gee: I am not sure council would have such power. You would have to get legal opinion on that. You might say it is implied; it is certainly not a specific power.

Mr. Renwick: But the bill is entirely discretionary if we passed it, is that not correct?

Alderman Gee: If we said to a developer, "We will grant you the demolition, which we have discretion to do, only if you have vacant possession of the building," I am not sure that is legal. I do not know. I think we just might be challenged in the courts on that one.

Mr. Spensieri: A supplementary, Mr. Chairman; we are being left with some misconception here. You are saying the only way to obtain vacant possession now is through a negotiated settlement or by common consent, and that is simply not the case. By following the appropriate notice period under the Landlord and Tenant Act, which is a shorter or longer notice period depending on what you have in mind, you can obtain vacant possession of any building at any time.

It follows as a corollary, that the minute you have vacant--

Alderman Gee: I do not agree with you, Mr. Spensieri, I do not think you can get vacant possession of any building at any time.

Mr. Spensieri: Oh, sure. We have not come to that point in our proprietary rights.

Alderman Gee: The only way you can evict a tenant is for nonpayment of rent, nuisance--

Mr. Spensieri: It is simply the notice period has to be longer or shorter, depending on--for instance, if it is for personal use there is a shorter period; if it is for renovations, you need 120 days; if it is for--

Alderman Gee: Okay, that is for the renovations requiring a building permit.

Mr. Spensieri: Yes.

Alderman Gee: You can evict a tenant on that ground, but you cannot demolish the building doing that.

Mr. Spensieri: I disagree. I think you can get vacant possession for any reason if you follow the appropriate route. The moment you can have vacant possession, and under your suggested exemption, any building becomes subject to demolition. That is a real risk.

Alderman Gee: You may be right; I do not think you are. I do not think you can evict a tenant, period, unless he comes within certain specific provisions of the landlord and tenant provisions of the Residential Tenancies Act. I may be wrong. If I am wrong, then I guess you can get vacant possession of a building just by serving eviction notices, but I do not believe that to be the case.

Mr. Spensieri: Refusing to renegotiate a lease, any building can be--

Alderman Gee: I do not think you can do it on that basis, either. The act presumes the--

Mr. Renwick: Mr. Chairman, I think I have asked Mr. Gee all the questions I need to ask.

Mr. Chairman: Fine. With time pressing on, I would thank Alderman Gee for appearing before us this morning.

Alderman Johnston: We have a map we would appreciate showing you.

Mr. Chairman: May we press along?

Alderman Johnston: Thank you very much.

Mr. Chairman: Excuse me, before you do, might I ask Mrs. Gardner and Mr. Fink, are you again part of the same delegation and will you be making a presentation together?

Alderman Johnston: If you remember, they were going to be available for questions. We were all part of the same delegation.

Mr. Chairman: You are all part of the same delegation.

Alderman Johnston: There are two and a half minutes left.

Mr. Chairman: That is fine. We have until 12:45 for this delegation. That makes it easier.

Alderman Johnston: My reason for coming before you today is simple. The city of Toronto and particularly North Toronto and ward 11 which I represent, is quickly losing all of its affordable housing.

My ward, and I think this will come as a surprise to many of my colleagues on city council, has more private rental apartment buildings, 214 according to the exhibit I filed with you, and 250 according to another survey, than any other ward in the city.

There is a tenant population of 24,208, which is 41 per cent of my ward. Rent review is the most frequent problem I encounter as a municipal politician, even though 90 per cent of all landlords do not go before rent review. Eighteen per cent of my constituents are over 65 years of age. In some parts of the ward, as I will show you, 50 per cent are over 65 years of age. Those figures horrified me.

I knew from the last census tract data that in the Bathurst-Eglinton area it was 28.7 per cent, but from a random survey we have also given you as an exhibit, it now appears to be over 50 per cent over 65 years of age.

Of the 900 units of which other witnesses have told you about, including Mayor Eggleton, Alderman Sheppard and Alderman Kanter, which have been demolished since 1980 or are about to be demolished, 488 are in my ward. Unlike some of the planners and the city staff, I have indications that the existence of other buildings is threatened.

As you have already heard, these buildings are not run down; I would question Alderman Gee's testimony to you. They certainly have been neglected, but they are well constructed, they are comfortable, and up until a few years ago they were well maintained. Today they would require little work to bring them up to the building standards bylaw. The owners of these buildings, the landlords, are not maintaining their properties.

In ward 11 today, we are seeing a majority of building owners following one of two set patterns to maximize their profits. I have got nothing against free enterprise, but I am concerned to see a select few maximize their profits while others, tenants, are left with nowhere to live.

That is why this bill is tied to rent review. It is a temporary measure, it is clear. It is meant to last only as long as rent controls are in effect. I personally would have no objection if your committee wishes to tie the legislation to a vacancy rate of 2.5 per cent as has been suggested, if that is your preference. The principle is simply that the city will be able to preserve existing well maintained, affordable housing until such time as the market does it for itself.

11:30 a.m.

The first of the two set patterns I referred to is a landlord buys a building, paying a higher cost per unit than it is actually worth, based on its land development potential. He then demolishes and builds condominiums, or alternatively he obtains building permits for renovations that are so extensive they require the tenants to leave.

Although tenants are given the first right to return under the Landlord and Tenant Act, the units are often far too expensive and

the tenants have usually made other living arrangements during the renovation period, which can last for several months, and they are very unlikely to return. We know of instances where the rent that is then charged is much higher than one would have expected. In either case, affordable units are lost.

The other method used by developers is buying and selling buildings each year, refinancing them, going before rent review, and having the cost passed along to the tenants. A random sample you have before you, exhibit B, table 1, of 205 tenant households in 37 buildings in my ward early this year, shows that 50 per cent of the tenants are over 65 years of age. That is exhibit B, table 1.

Sixty per cent of them have lived in the area for 12 years or more; 19 per cent have lived in the area 25 years or more. With each new landlord, these people must pay off the building all over again. The rents are rising out of reach, especially for seniors.

You will see in the survey, two thirds of the tenants were paying over a quarter of their gross income in rent, on tables 7 and 8. This survey was done by city staff and was supervised by Alderman Gee and by me, so you can be sure it is impartial.

When they were asked where they would go if they had to move, the response most often received was: "I do not know. I do not want to move." The two most frequent other responses were, "The same area," and, very sadly, "The graveyard." That came up quite spontaneously and with a great deal of depression.

The rapid increases in rents in the city resulting from annual purchasing and refinancing combined with a move to demolish buildings to build luxury condominiums, is squeezing out the moderate-income tenant, especially in my ward.

In November 1981 council adopted bylaw 749-81 which applies to apartment houses containing 20 or more units in areas zoned as residential and prohibits the reduction of the number of apartment units to less than the number existing on the date the bylaw was passed. That as you heard earlier, was the Gee-Sewell bylaw. I tried to amend it--I have not yet been able to--to include similar demolition in areas zoned commercial. I believe Alderman Sheppard seconded that.

That would be the illustration of the problem at 118 Eglinton Avenue West. Just over 80 per cent of all private rental units in pre-1976 apartment houses were subject to bylaw 749-81. I would like to address some of the questions raised as to why we cannot do this under the zoning bylaw

The city's attempts to contain demolition pressures began on October 1, 1980, when council passed bylaw 734-80 which attacked the problem by limiting the size of new buildings on sites presently occupied by apartment houses to 11 metres in height, and a density of one times the lot area. This bylaw, when enacted, was meant to be for a two-year period, to commit more effective long-term solutions to be developed.

On June 25, 1981, bylaw 734-80 was quashed in divisional

court. That action was brought by Mr. Allan Blott, who is the lawyer for the owner of the three famous buildings on Eglinton Avenue. I believe he was supported by the owner of 2525 Bathurst, the other key building.

The court held that discouraging apartment demolitions, however worthy an objective, was beyond the city's powers and the Planning Act. As you have heard from Mr. Fink, we were advised to visit you. The city was denied leave to appeal this decision on September 9, 1981. The bill that Susan Fish has introduced, and I thank her for it, is a longer-term solution that the city was developing when bylaw 734-80 was quashed.

If the court case had not occurred, or had been decided in the city's favour, the bylaw would have been in effect until this fall, and we would hopefully have received legislation through Bill Pr13 by that time. This is why I beg you to enact emergency legislation over this summer, enacting a freeze or some sort of emergency legislation to protect these people in this room until you do, hopefully, bring Pr13 into effect.

In any case, that is a very brief summary of about seven years of very hard work, working with other people in the ward and with tenants in the ward, and it is some of the highlights of what the city has tried to do to deal with this problem and the history of the development of Pr13.

Since the problem is so severe in my ward, I would now like to take you on a tour of the ward to illustrate where the problems are and to give you some examples of the types of problems I have just described. Joell Vanderwagen has prepared this map for you, so that while I speak you will be able to see what I am talking about. To orient you to the area, here is Yonge Street and here are Eglinton Avenue, St. Clair Avenue and the city limits which surround my ward on two and a half sides, one being the borough of North York where there are similar problems, I am told, and certainly I am sure of in the borough of York.

The black dots on the map mark each and every apartment building with over six units in the ward. The large red dots represent buildings which are being demolished or are under direct threat, and I believe them to be the tip of the iceberg. The blue dots are all buildings with a variety of problems: renovations, conversions, massive rent increases, all of which end up with the same end result--the tenant has to leave.

I have worked to find solutions and I would like to tell you about some of those. The green dots show attempts to find solutions. The first was a Cityhome one. We were able to purchase 49 units at Oriole Parkway and Collegeview. It is the only time we have ever been able to purchase any of these buildings in my ward because the provincial subsidies to Cityhome are insufficient. I have been trying since 1974, I believe, to ask the city to purchase some of these older apartment buildings as they came on the market, and it is impossible under the present subsidies from your government.

The Toronto Transit Commission air rights, which I referred to the last time I was here, Davisville yards, a development by

Victoria Woods which has been approved--I would like to clarify this for the record as I checked with the planners--include a total of 1,018 rental units which would include 366 for seniors.

They have to be rental units because at the moment the Condominium Act does not permit conversion, I am told, to condominium if you are not talking about land. We are talking about air rights. However it is not being built. It has received all the necessary approvals. I think the date was April of last year. I am told the problem is financing. I spoke to the gentleman from Victoria Woods last week. It was on April 16, 1981, approval was given for that.

I dreamed up one solution I had told you about before. It is the green dot at the corner of Eglinton and Yonge and it has air rights over the northern district library which fortunately had steel in the first two and a half stories. I dreamed about it at night. I dreamed I lived there. I dreamed I went down to the library. I dreamed I walked across to Yonge and Eglinton and I got up and I wrote it all down. I wrote to the planners the next day. The planners thought it was a neat idea. It has received city council approval and Ontario Municipal Board approval, and it is being built as a nonprofit co-op by the Metro labour council. I hope I can live there some day.

11:40 a.m.

The Canadian Armed Forces base on Avenue Road is a large green dot. It is 6.5 acres. Long before I was an alderman, which I have been for 10 years, I worked with Alderman Crombie, then with Stephen McLaughlin before he became commissioner of planning, to persuade the federal government to give us the 6.5 acres for a variety of uses, which included housing for seniors, services for seniors, a community centre, of which there are none in my ward. Then we had money.

We were unable to persuade the federal government or any of the parties to actually give it to us when they had the power, although they all promised to before they got into office. Since 1974, as I told you, I have been asking Cityhome to purchase these smaller affordable apartment buildings as they came on the market.

If you refer to exhibit B, the survey of the Bathurst-Eglinton area and to the mark, you will note the very high concentration of apartment buildings, and four of the five key examples of the problem that we are facing in the Bathurst-Eglinton area, the triangle in yellow.

It is a distinct and unique community. A large proportion of the tenants are elderly; they are Jewish. There are three synagogues, kosher shops and very good Jewish social support services in that area, which form a central part of their life style. Even more important are the deep roots they have established with their friends and with their families. Many of their daughters and sons tend to live in the area. I find it to be, therefore, also the destruction of a neighbourhood.

To reiterate the mayor's words to you when he appeared before

you: "The existing rental stock is a precious resource not to be squandered away. Given the critical and abnormal circumstances now existing, demolition of rental apartment buildings in sound condition cannot be justified. Provincial rent review provides for a reasonable fair return on landlords' investments, which will still be realized with demolition control.

"We are not talking about taking people's property rights away from them permanently, we are talking about balancing those property rights with the needs of the community. People's housing needs must take, in these days of crisis, priority over maximum returns to property and investment for the moment. Demolition control is not probably the only solution or the final solution, but it will give us breathing space to work out some long-term solution."

I would be very unhappy to hear you go for a solution that applied only to buildings which are under rent control. I predict that the next game in town in my area--and I predict we will all be back again--will then be forcing up rents so they therefore go out of rent control. I can predict it, I can feel it, I can smell it.

I would like to tell you that we probably have some of the most unpleasant landlords in the city of Toronto in ward 11, and not all of them are unpleasant. I received a telephone call last night from a small landlord on Lawrence Avenue who called me about a parking problem. He apologized for bothering me because he realized we were having a large amount of work to bring this matter before you. He told me he has five tenants, four of whom are subsidizing an 86-year-old tenant in his little enterprise. You cannot legislate caring like that, unfortunately, and we have, as I say, some of the most unpleasant landlords in the world, I think.

I have also been a bona fide tenant, and I suppose I will be one again, if my children can ever afford to move out of my home, which I am quite looking forward to. The girls are now working for inadequate payment, the ones who are able to go and look after themselves. They cannot afford the rentals. I can give you illustrations of young people, single parents, families also, as well as this overwhelming problem with the elderly population.

I would like to tell you--and Mr. McMurtry will remember this--about the large red dot up there, the Avenue Road-Glengrove illustration. That is the only illustration in my ward where they pulled down really nice, affordable, very comfortable apartments at very good rentals and replaced them with very expensive town houses. You probably all saw them if you ever drove north on Avenue Road. They were boarded up for many years.

Mr. McMurtry visited those buildings with me. He will remember the blind people, the lady who lay in bed with cancer. He will remember the lady who had a car driven through her bedroom wall which was not fixed for a week.

Mr. Philip: The car or the bedroom wall?

Alderman Johnston: The car went out of control as it came around the curb, went across the grass and went thorough the wall. The landlord, I might tell you, was the first landlord in Canada, I

believe, to be convicted of harassment under the Criminal Code. I believe that in the end he pleaded guilty.

He has gone, thank God. He owned an awful lot of property in my ward, and there was a general shuffling of tenants from one building to another as he brought them up to very expensive rentals. Where they eventually shuffled to I do not know, but they were mostly got rid of. He was a very unpleasant character, and I believe Mr. McMurtry would totally agree with me.

Mr. Brandt: He is nodding yes for the record.

Alderman Johnston: Yes, I am sure he is. I think that man owned something like eight or nine enterprises in ward 11. I shudder to think of his ever coming back to ward 11.

There were some comments made about tenants knowing their rights. It has not been my experience that tenants know their rights. It has been enormously hard work to teach them their rights over the last seven years.

The first issue, and I think Mr. McMurtry would probably remember this--Margaret Campbell was then the member for your riding, Ms. Fish--was 123 Oriole Road, owned again by that very unpleasant landlord, Anglo-Keno Developments. We made some changes to the Landlord and Tenant Act as a result of that. You may remember it; it came before you just before a provincial election. Those tenants were harassed out of their minds. That was the first tenant issue I was ever involved with.

You asked for some hard luck stories. The greatest hard luck story I remember in that issue was an 89-year-old man who was blind, on his knees, packing his belongings in a box one night. I was trying to persuade him to stay. I was trying to get him into Metro housing, but he disappeared. I have always worried about that man, and there are many other people like him. You just do not know where they go when they disappear. Some of them just disappear.

Without Kay Gardner, without Richard Fink, without Bob Murphy, without my two assistants and without my secretary, all of whom work endless hours on teaching tenants their rights, they would not know their rights. Some of them did not talk to one another before rent review and demolition of buildings became a problem. They are, as you can see now, a community. They are good friends.

Tenants are not easy to organize; they are not easy to teach about their rights. It takes an inordinate amount of work, on the part of volunteers often, to help them organize, and when they are older, it is more difficult.

This issue, I might tell you, played a very large part in my decision to run in the last provincial election. I could not be heard, I could not get the message across, and I decided to run on issues. This was the overwhelming issue in the riding I tried to represent. Fortunately, this seems to be an issue you at last understand.

Alderman Gee was talking to you about finding vacant units. I think that is an absolutely hilarious suggestion. The figures, I

think, at the moment show that that one in 14,000 tenants is able to find a building to live in. I have tried to find places for these people to live. I have tried to move these elderly people into what I consider to be safe housing, Metro housing. There are large waiting lists for Metro housing, for Ontario Housing, for Cityhome. One just cannot find them a spot. If Alderman Gee has any idea, I am sure some of the people in this room would like to know where they could go and live a quieter life, which I think they are entitled to.

I can tell you about students at 118 Eglinton Avenue West who we were able to stay in that building until they at least were able to finish trying their exams. They constituted the case Mr. Fink referred to in his presentation to you. We were able, fortunately, to get a better settlement. At least they got some money when they eventually disappeared, and I do not know to where they disappeared.

There was a pregnant woman there who was nine months old. We eventually found her a place to live in Mississauga.

Mr. Epp: You mean nine months pregnant.

Alderman Johnston: I am sorry, she was nine months pregnant. We were able to keep her there long enough at least for her to deliver her child. She was a single parent. She married during that period and, hopefully, she is living happily ever after in Mississauga.

Mr. Gee's solution, it seems to me, is playing games with the landlord. How can you say, "We will allow you to demolish your building as long as you find somewhere else for those tenants to go"? There is nowhere else for those tenants to go in the Metropolitan area. They are not content with being told, as they have been told, they can go to Oshawa. There is no other solution.

Prl3 is very specific, it is very clear and it is a warning, I think, to landlords that they had just better care a bit more and not harass tenants quite so much. One of the reasons this bill is before you is that we have gone through a lot of harassment too. I find as an alderman not being able to assure people that they are going to be able to stay in their own homes is very difficult--to try to persuade them to stay and fight, which I told these people to do about three years ago.

I thought if they stayed and fought they could win. Some of them have stayed and some of them have fought. Some of them have moved from one problem area to another and I would like to go through some of the problem areas specifically with you.

Joell, maybe you could point on the map to where we are talking about. The red ones are the demolition areas, 790-840 Eglinton Avenue West. The landlord pays a higher cost per unit because the purchase price is based on the potential of the land rather than the value of the building. That is, at the moment, held by an appeal to the cabinet, and I hope we get Prl3 before the cabinet rules.

In 118 Eglinton Avenue, West--that is the one I was referring to with the pregnant lady, etc.--there are 26 units. The tenants there settled to leave for \$1,200. The landlord ran out of money.

he building is now up for sale. It is boarded up and it is vacant. They are usable apartment units.

In 321 Chaplin there are 84 units. The building is run down, not kept as a rental property and not being maintained. We are pretty sure if these buildings go, the four we have referred to, this one will fall like a stack of dominoes.

There is one that Mr. Sinclair referred to which is before the courts. I am not going to give you an address. It has 80 units. It had two 30 per cent rent increases; then they evicted the executive of the tenants' association successfully. The vacant apartments are now rented out for \$750 a unit. They sought vacant possession because they wished to put in washing machines and sinks. To convince tenants they can stay, that that is illegal, is again very difficult.

In 117 Old Forest Hill Road the owner renovated, threw the old tenants out, and now is probably going to go to rent review. The building is fully occupied again. That has 30 units.

Just east of my ward on Keewatin Avenue, just a stone's throw from the Yonge-Eglinton area, there have been 25 to 30 per cent rent increases per year for the last two years. They are very old buildings with 60 to 80 units in each building. At 110 Keewatin the ownership came up twice in two years with hundreds of thousands of dollars of profit each time. I am not as familiar with those two, but I thought I would bring them to your attention since Alderman Rowlands has not appeared.

At 2121 Bathurst, there are 242 units and at 10 Shalmar, 138 units. These are the non-arm's length mortgages and they are admitted as such. At 10 Shalmar the owners financed the building by taking back loans themselves. Whether the interest charged on these loans should be passed through to the tenants, the commission should be ruling on soon. However, the same thing happened in Scarborough at 2225 Markham Road and it was committed by rent review.

The building at 740 Eglinton was another famous case I am sure Mr. McMurty will remember. That was an attempt to go around condominium conversion by issuing shares. I believe seven tenants are still left there out of the original tenants, but some of them moved on to the famous buildings to the west and got caught again in our dilemma. It is not a quiet life to be a tenant in ward 11. The tenants' lawyer there has argued that increases are invalid because they are being paid to shareholders not the landlord, and that matter is before the courts.

At 45 Gardiner Road there are 30 units with a 40 per cent rent increase; 11 Shalmar and 21 Mayfair, 276 units in the two buildings and they received rent review notices up to 38 per cent; 665 Roselawn, 38 per cent proposed increase, 85 units; 2770 Yonge, rents increased by 33 per cent and it now costs \$450 for a one-bedroom unit.

If you do not tie it to all apartment buildings, those rents will slowly creep up and they will be out of rent control.

At 134-135 Laughton and 50 Oxtan, there are about 136 units. At 7 Heath Street West there is another old building with 40 units. The new landlords arrived and the rents were greatly increased. At the Palmar apartments up on the Yonge area, just below Lawrence, 3110 and 3112 Yonge Street, and 41 and 45 Lorindale there were large rent increases. That is the picture and it is a sad picture. We are talking about elderly people and single parents--we have a large number of those in my ward too.

I beseech you, members of the committee, to pass this bill and pass it soon. If you do not, please enact emergency legislation to keep us going and keep us fighting over the summer. Thank you.

Mr. Chairman: Thank you very much, Alderman Johnston.

Mr. MacQuarrie first and then Mr. Philip.

Mr. MacQuarrie: I take it that since you have been representing your ward for 10 years you are very familiar with it. What proportion of your ratepayers are living in single-family dwellings as opposed to rental units?

Alderman Johnston: I gave you that figure. In my ward 41 per cent are rental, so the rest are living in houses or smaller apartments. There are also a lot of duplexes lining Avenue Road. I might point out it has the highest number of rental buildings in the city of Toronto.

Mr. MacQuarrie: In exhibit B, our exhibit 13, you gave certain reasons for attachment to the district on the part of tenants: transit access, closeness to family and so on. I looked at some of the owners of single-family dwellings, particularly the elderly, whose families have moved away and who also have similar attachments to the district. What would be wrong with the city permitting them to duplex their houses?

Alderman Johnston: I think that that is probably going to happen. First of all, I do not think they would want to duplex their houses, but I think they will want to double up, and in some cases they are doubling up. I know of people living illegally in single-family houses which I am not reporting to our inspectors because they would not be permitted to carry on.

Mr. MacQuarrie: Why not? Why would they not be permitted? Is that against the law?

Alderman Johnston: It is against the law to live in basements, yes. It is against the law to illegally convert to duplexes.

I do not think the solution necessarily is to split buildings. I think the solution is to group people together in one house. I live with five children, one friend at the moment and a frequent number of people from all over the world. We are sort of northend Nellies and we find it perfectly comfortable to get along with one kitchen and live together.

12 noon

Mr. MacQuarrie: Taking for granted that neighbourhoods do change, because neighbourhoods after all are people and people have families and families grow up and leave, then they are left alone with an attachment to the neighbourhood. They want to stay in the neighbourhood if they can. They would like to stay in their home if they can. The home is too big for them to look after in a practical way and the only practical approach for them really is to duplex it or divide it. Would you go for that sort of approach as an alternative?

Alderman Johnston: I have no idea at this point. At one time I would have said absolutely definitely no, that our own zoning was inviolate and sacred. However, we now have a group home policy in the city; I think we are the only municipality in Ontario to have a very clear one, a pretty wide open one. Susan Fish and I worked on that committee.

It is permissible now for groups of elderly people to get together and live in a group home situation. I think that is a solution. I also predict it to be a solution for women living with families eventually. You move when the people move. I think it is beginning and our planners are looking at solutions like that now. I do not know, but I do not think you can tell people who own a single family house that they have to do something.

Mr. MacQuarrie: Would you not include that as a permitted use in a single-family neighbourhood--

Alderman Johnston: I think it is certainly worth consideration.

Mr. MacQuarrie: --as an alternative approach to providing an affordable stock of housing?

Alderman Johnston: It is also a long-term solution. It is not a solution to the problem we are here with you today for.

Mr. MacQuarrie: The main thrust of the bill, as I understand it, regardless of official plans or zoning bylaws or the like--and I am still not entirely convinced that the problem cannot be attacked by zoning--is to preserve the existing stock of affordable housing. That is the main thrust of the bill. I tend to look to see if there are any alternatives. How much vacant land is there in your ward?

Alderman Johnston: None. I told you about that. The only piece is the Canadian Armed Forces base on Avenue Road and that is 6 1/2 acres. If you can help me get it, I would love you to do it.

Ms. Vanderwagen: The incinerator site.

Alderman Johnston: I forgot to tell you about this one, the incinerator site in Forest Hill. I am so glad you brought it up. I would like to tell you about it if you do not mind.

You asked me a question about vacant land. There is a

marvellous site in Forest Hill. Joell will point it out. It is called the Forest Hill incinerator site.

I beseeched Metro not to give it to the police as a police station. I almost cried at Metro council when they gave it to the police for a police station. It is a ridiculous place for a police station because the division that it covers stretches from the end of my ward right over to the borough of East York. It is also very close to 13 Division, just down here, so it is a stupid place to put a police station, let alone putting it in the middle of that residential area.

The Ministry of Municipal Affairs and Housing came down to see us at city hall a couple of months ago and told us we had to come up with innovative solutions to create affordable rental housing in the city. I just screamed at them because the cost to buy land on the market in my area is very high. The only piece of municipally owned land was the Forest Hill incinerator site and they have now offered to assist us in purchasing some land.

If you can help me, I would love you to come with me, to come to the police chief, to come to Paul Godfrey, to come to the other people who have the power to change that decision. I would appreciate your coming. That is a solution, but again it is a long-term solution. That is the only piece of land.

Mr. MacQuarrie: It is the only piece of land of any size owned by any institution or any individual? There is no church or college holdings or any land at all in the ward whatsoever?

Alderman Johnston: There are church lands and some of the churches are now considering this. I helped with the area planner, and with the assistance of POINT, which is an interagency group in my ward, we set up a group called HINTS, Housing in North Toronto for Seniors, who have written to you on this matter.

That group includes ministers of churches. I think the nonprofit idea is growing and that there will be in the future, not now, not an answer to our crisis, but perhaps an answer--building on church lands.

We tried it at Avenue Road and Burnaby Boulevard, at a little church called St. Margaret's. It needed rezoning. There were 865 people on the waiting list when it was just being talked about. It did not happen; the church finally gave up. They could not hang in there for the rezoning application.

Mr. MacQuarrie: But that covers the vacant land available in your ward.

Alderman Johnston: There is nothing else. The vacant land is over the Davisville yards; they are exploring the subway air rights. There is nothing else, other than our parks.

Mr. Elston: Upper Canada College.

Alderman Johnston: Upper Canada College. The playing

fields of Eton? I do not know. I do not think you would support that, somehow.

Mr. MacQuarrie: How long has the existing zoning been in effect in the area?

Alderman Johnston: How long has which existing zoning been in effect?

Mr. MacQuarrie: How often has the zoning been changed?

Alderman Johnston: The first thing I did when I was elected in 1973 was to start a planning process. It was bylaw 61-73. It put a height limit over the Yonge-Eglinton area; it went all the way up Yonge Street, down as far as the TTC yards, along Eglinton Avenue as far as the village of Forest Hill, into ward 10 and down Mount Pleasant Road.

The planners may be able to correct me on that. I wish I had the local plan with me.

We think we can get 2,000 rental units along the strip between Eglinton and Lawrence Avenues, on Yonge Street, by redeveloping commercial underground floors and housing units on the second floor.

There are some nice illustrations of that already starting. There is one now being built on the corner of Chaplin Crescent and Yonge Street, just opposite the TTC, a couple of blocks north of that.

I think that is one solution but, again, it is a long-term solution. In fact you could get more housing built by doing it this way than by doing it that way.

The building that Alderman Gee lives in, 500 Duplex Avenue, is the building which probably radicalized the north end of Toronto, including the Attorney General (Mr. McMurtry), who was a ratepayer president at that time and we all petitioned the Ministry of Housing for such a bylaw as I brought in, bylaw 61-73.

Mr. MacQuarrie: In terms of height control.

Alderman Johnston: Height controls. We had 80 stories being asked for at Yonge and Eglinton and a lot of concern about changes to the neighbourhood; 500 Duplex was done through a minor variance of the committee of adjustment in an area of two-storey houses and did more to wake up the north end to not really good planned development than anything else did.

It is very expensive rental accommodation. I do not get any calls from that.

Mr. Philip: They have their own lawyers.

Mr. MacQuarrie: How about shopping centres? Are there any shopping centres?

Alderman Johnston: We have a very big complex at Yonge and

Eglinton. That Yonge and Eglinton area has about 20,000 people in the daytime. It has reached its permitted growth under the official plan. It is an interior mall. By the way, it has a very bad effect on the strip retail businesses to the north, south, east and west.

Mr. MacQuarrie: Is there any prospect, apart from the air rights you have mentioned, over some of the municipally owned facilities--

Alderman Johnston: Yes, there is a possibility at Heath Street East. Gerald, can you point out the municipal parking lot between Heath Street and St. Clair Avenue East?

The problem is that I also have to wait my turn in terms of the dollars we get from senior levels of government. Again, we have expensive costs. But that is a potential, between Heath and St. Clair.

Mr. MacQuarrie: As I understand it, in your particular ward, there are prospects--although they might not be immediate prospects--of some solutions to the problem of affordable housing.

Alderman Johnston: They are very far up the road. We are limited by the numbers of dollars we have and by the numbers of projects the city is trying to achieve.

12:10 p.m.

If we could have bought, that would have been great. We would not be here today. When I have asked to buy, I am always told that the unit cost is too high. If we could have built, believe me--I think the staff would back me up on that--I have no problem with introducing Cityhome projects into my ward and have actively tried to do so.

One example was just north of Eglinton Avenue, where we thought we had something, and it turned out that a movie theatre owned the municipal parking lot, not the city. We found that out quite far along in the planning process.

I have really tried. I think that Mr. Coleman of Metro housing has promised me. He cannot look me in the eye and say, "I will not build Metro housing in your ward if we can get a site." He has promised me he will do that and bumped me up the list.

With Cityhome and everything we have tried so far, purchasing or building, we have not been able to achieve it. The one prospect we do have is at St. Clair Avenue East and Heath Street.

Mr. Philip: Alderman, your colleague in your ward suggested that some kind of alternative proposal to this bill might include limiting the gross floor area. I suppose he was trying to indicate that would keep the price of the new units down.

Yet, when I read the decision of His Honour Judge Spence Stewart, in the matter of Osler, Saunders and Callaghan, I notice that bylaw 291-68 attempted to deal with the matter of gross floor

area and that it was thrown out as being ultra vires. Is that your understanding?

Alderman Johnston: Yes, that is the Axelrod decision. I would like to call on Mr. Fram for that, who can speak on it much more eloquently than I can and give you the reasons.

Mr. Philip: I would like to call the city's solicitor, Mr. Fram, back as a witness at some time because a great deal was said at the session in which you made an introductory presentation, suggesting that somehow the city could regulate by changing bylaws.

In fact, having read through that particular decision--I am not a lawyer--Axelrod Holdings Ltd. versus the Corporation of the City of Toronto, it seems fairly clear to me that you cannot do that. Is that your understanding?

Alderman Johnston: Mr. Fram will have to correct me, but the lawyer used my name extensively in this and accused me of trying to use the zoning bylaw illegally in order to prevent demolition. I would have to defer. I am no lawyer, I am just a politician.

Mr. Philip: Perhaps the way of going about this would be if I could table, since we do not have this as an exhibit--is that correct, Mr. Chairman?

Mr. Chairman: That is correct.

Mr. Philip: The Axelrod Holdings Ltd. versus the Corporation of the City of Toronto--if I can provide you with that, perhaps it can be distributed to all members of the committee and we can, at some future session, question Mr. Fram in great detail.

It, in fact, disproves a lot of the testimony and some of the statements the members of this committee may have made at the earlier session at which you were present.

Alderman Johnston: Right. I listened to--

Mr. Fram: Mr. Chairman, I would be delighted at any time to be called upon.

Mr. Chairman: Mr. Fram was not at a microphone. I might indicate that he has shown his willingness to provide assistance in that regard. Mr. Renwick, did you wish to speak or have a supplementary now?

Mr. Renwick: No, thank you. At some point I have a minor point of order.

Mr. Philip: I just have a couple of questions because unfortunately I am due to make an appearance as a witness at the Ontario Municipal Board at one o'clock.

Mr. Renwick: On the part of a developer.

Mr. Philip: Not on the part of a developer. Anyway, I found an interesting document in my files from the United Senior

Citizens of Ontario Inc., the Ontario division of Canadian Pensioners Concerned and the Association of Jewish Seniors.

They point out that according to the 1976 census track seniors form 11.8 per cent of the city's population, but in the north Toronto area this figures jumps to 17 per cent. If my understanding is correct, the area they speak of as being north Toronto is Ward 11, or is it a broader area than that they are referring to?

Alderman Johnston: Mr. Lewis is here. You could probably question him directly yourself. Yes, they are speaking about that area, and I think, in particular, of the area around Bathurst Street and Eglinton Avenue West.

Mr. Philip: They also point out that upon retirement these people have a dramatic loss of income. Therefore, if this bill does not go through, these people will be affected in a very direct way; they cannot possibly afford to continue living in that district. Is that correct?

Alderman Johnston: That is absolutely correct, and there are many people in this to whom that applies. I think Kay Gardner gave you some good illustrations of that. We could certainly provide you with hundreds more.

Mr. Philip: Perhaps I should have done my homework a little bit better and found out this figure myself, but can you tell me, in trying to get people into the Metropolitan Toronto Housing Co. Ltd., what the income cutoff is above which they are not considered? Do you know that figure?

Alderman Johnston: I cannot answer that off the top of my head. I think it is \$12,000. I am not really sure. I can certainly tell you that an awful lot of the people I have put in touch with Metro housing qualify. Then it is a question of going to Scarborough or Etobicoke. They do not want to go; they want to stay where they are. So even if one is able, and it is very unusual to be able, to find a spot, they tend to decide to stay put and fight.

Mr. Philip: Of those people who do come out to areas such as Etobicoke and, more particularly, the area of Rexdale which I represent, I am finding an increasingly large number who come to me and say: "It is a nice community, but this is not our cultural group. We do not know the kind of resources and we want to move back into the centre core of the city because we are not happy here."

Are you finding the same kind of problems with people coming to you?

Alderman Johnston: Absolutely. I have a case at the moment where I was able to get something. As I say, there is a large waiting list. The problem with intervening is that you tend to use some pull to get your client bumped up against other people who are also on the waiting list. Therefore, I do not like doing it, but you have to do it.

One person in particular would not move. The lady, who is nearly 90, will not leave the Bathurst-Eglinton area because her children are in the area. She attends the synagogue there, and that is where her roots are. She just will not go. She is one of the people, by the way, who said she would rather go to the graveyard.

Mr. Philip: Those seniors whose incomes are between \$12,000 and \$20,000 would not qualify for Metro Toronto housing, so they cannot get in there. However, at the same time, if we assume that they should be spending no more than 30 per cent of their incomes on housing, they would not be able to qualify for any of the other buildings that would replace these either, would they?

Alderman Johnston: No. The solution for people in that income category is a nonprofit co-operative. That is starting, but it took a long time.

I remember trying to introduce the idea of nonprofit co-operatives in the early 1970s. They started extensively in Ward 9. We had some people come up from Ward 9 to Ward 11 and it was a concept you could not sell then. It is a concept that is selling well now.

Mr. Lewis is involved in one, just to the south of Eglinton Avenue West, just about where the "E" is on Avenue. That is coming on stream.

Mr. Philip: But the co-ops tell us that it has been difficult to get funding and that the processing with the federal government is extremely long.

12:20 p.m.

Alderman Johnston: It is difficult to get funding. It takes a long time. That is right.

Mr. Philip: Have you done any follow-ups on some of the people who have been displaced? You gave us some cases of people who simply disappeared, Have you done any follow-ups?

Alderman Johnston: I never have time to. I try. I like to keep in touch with people. One reason I like to keep in touch with people is to know what happens to the next tenant who comes in under rent review. I believe that when somebody leaves the apartment is illegally rented at a higher rental. That is one reason for trying to keep in touch with people.

I have kept in touch, however, with the people at Avenue Road and Glengrove Avenue, the victims of Anglo-Keno Development. One of those tenants was Mr. Frank Buckley of Buckley's Cough Syrup. He became very radicalized through this unpleasant experience. I am sure you would enjoy hearing from him. I see him quite often and I am aware of what is happening to the people who left there, who did not wish to go and who, again, had roots in the area. They are not enjoying their lives as much as they used to, being displaced.

Some of them are very elderly. Some of them were younger and therefore it was easier for them to adapt. None of them, as far as I know, was able to buy, so they are in rental housing. I hope they have pleasant landlords. I could probably track some of them down for you, if it would be helpful.

Mr. Philip: It would be interesting to find out exactly how they have adapted to Scarborough and Rexdale or wherever it is that they have been forced to move to.

Alderman Johnston: There is one lady who I hear from almost every week who lives in your area and still regards me as her politician. She calls me for all sorts of advice. She is very unhappy being displaced. She happens to be somebody who comes from my home town and I suspect that this is why there is an attachment. She wants to come back into the area and, of course, cannot.

Very frequently, they are told by Metro housing that if they get in, they have a better chance of getting into the area they would like to be in. They can move from one to the other. But I have not found it works too often.

Mr. Philip: If they get into the Metro Toronto Housing Authority rather than the Metropolitan Toronto Housing Co., transfers can be extremely difficult because of the transfer policy. Is that not your experience?

Alderman Johnston: Yes. That is part of the problem.

Mr. Philip: You have to prove that your doctor says you are going to die, or that you have a new job in the area, in order to get a transfer. The onus is on the tenant.

Fine. My apologies to the committee and to the other witnesses, but I simply have to be at the municipal board.

Alderman Johnston: I have just been passed a note from another of my constituents which I would like to read into the record. It concerns a building on Chaplin Crescent. With regard to the new rent increases for 1982, they were asking \$600 and now are asking \$900 and a 20 per cent charge for parking.

Mr. Philip: Pretty expensive.

Alderman Johnston: I would not like to leave the committee with the impression that we are only talking about the problems of the elderly, that we are only talking about the problems of the Jewish community; it is a problem for my whole ward.

A particularly good illustration is in the Bathurst-Eglinton area where there is a discreet community and all sorts of social support systems. It is a problem throughout the entire ward for single people; young people, particularly young women, who have to deal with it as much as young men; single parents; singly-raised families--we have got a lot of them--divorced women with children who have left houses and gone into the Yonge strip. It is a problem for the whole community.

Mr. Philip: On that, I will just ask one last question and then cut off, Mr. Chairman.

As you well know, in order to get into Ontario Housing or the Metro Toronto Housing Authority, you have to either be disabled, a senior, or be classified as a family--in other words, have children living at home or something like that.

Are there are lot of people living in these apartments who are what one would call "empty nesters," namely, single people who do not have families and cannot be classified as disabled? If so, where are those people going to go since government housing has no apartments whatsoever for them?

Alderman Johnston: I have no idea. I cannot answer that. I do not think there is anywhere for them to go. What we want is for them to stay right where they are now. They regard these as their homes.

Mr. Philip: So if this bill is not passed, these people are, for want of a better word and I do not mean to be dramatic, out on the street.

Alderman Johnston: Yes, they are. It is not dramatic; it is the truth. The point is that there is not a vacancy rate. There is nowhere for them to go and Alderman Gee's submission to me sounds ludicrous. It is really killing the troops.

Mr. Renwick: Mr. Chairman, a point perhaps properly addressed to the clerk. Is it possible to photograph that map, have it reduced and made an exhibit to the hearings of this committee? Alderman Johnston's superb presentation requires a reference to that map to understand it.

Mr. Chairman: Yes. The clerk says, without promising, the clerks' office will do its best.

Mr. Renwick: Thank you.

Alderman Johnston: If that is not possible, I would be very happy to provide you with another copy. We will make another one.

Mr. McLean: I have a question I would like to go back to. On June 3 Mrs. Gardner had a brief with regard to 790, 800 and 840 Eglinton. We have a letter that says:

"Contrary to newspapers and other reports of the 134 apartment units contained within these three buildings, as of June 1, 1982, less than 30 units were occupied by senior citizens.

"In the immediate vicinity of Bathurst Street and Eglinton Avenue West, specifically at 989 Eglinton Avenue West, construction of a senior citizens' apartment building has recently been completed. We are advised that of the 144 senior citizens' apartment units available in the building, as of this date only 38 units are

presently occupied and, accordingly, there are several apartment units available in the immediate area for immediate occupancy by senior citizens."

Could you comment on that?

Alderman Jonnston: Yes. I would be glad to. As I told you earlier, it is very hard to organize tenants. Tenants do not have a clear understanding of the Landlord and Tenant Act and they are hard to persuade to stay and fight, so a lot of them did not. However, some of them did.

I think also--and I hope I am not getting myself into trouble here--that Mr. Blott advised his clients to rent to young singles and, funnily enough, some of those young singles have joined the fight. There has been a good attempt to get them out.

Mr. McLean: Where would the people who moved out go to?

Alderman Johnston: I think that Kay may be better able to answer that than me.

Mr. Fink: Almont Nursing Home. That is where they are going. Some of them are at Women's College Hospital at the present time, some of them have joined their relatives and some of them have found alternative accommodation.

Alderman Johnston: And some of them have died.

Mr. Fink: I have an aunt living at 321 Chaplin Crescent. She cannot afford to pay \$600 a month rent there, which is right across the street from those buildings, but she cannot put her furniture in the new accommodation that Mr. Blott refers to in his letter. Her furniture just will not fit in the room, it will not go through the door. So she is in the position where she will either move with no furniture, or stay where she is, paying these very high rents, with furniture. Plus, some of the tenants at 790, 800 and 840 are paying rents \$50 and \$60 a month lower than they would be paying in the government-assisted housing down the street at 989, if that was the correct address.

Mr. Murphy: I think Mr. Blott's letter referred to the three particular buildings. He said that there are fewer seniors in there than there were four years ago.

The problem with that particular building is that Mr. Axelrod bought the buildings in 1978 and immediately applied for 40 per cent rent increases. He also sent a letter around from his lawyer to the tenants demanding the tenants who had been there, some up to 20 years, pay their security deposits.

It was a rather threatening letter. Then he visited some of them when they did not pay. So a lot of these older tenants--I was in the buildings in 1978 and I would say at that time they were 80 per cent over 65.

12:30 p.m.

Four years is an awful long time to live with this. Mr. Blott's letter to that extent is quite true; a lot of them just got fed up and left because they were given 40 per cent rent increases that fortunately the tenants beat. They were told to pay security deposits and they had to live with this uncertainty over demolition, so some of them left. I think if he was not renting to young singles he would be getting old people again.

Mr. McLean: What is the rent in those buildings?

Mr. Fink: Less than \$300. About \$250, \$240, \$270.

Mr. McLean: With the 40 per cent increase?

Mr. Fink: The landlord is asking presently for a 40 per cent increase--

Alderman Johnston: In some cases 100 per cent.

Mr. Fink: --or 100 per cent, but he has not got it yet. A hearing date has not been set yet.

Mrs. Gardner: I think there are two people here who did in fact go to investigate the apartments at--was it 9 something Eglinton Avenue West? They are asking about \$400 a month for a one-bedroom apartment with virtually no space at all, very small. There is no closet space, and when one of the women asked about where they were going to put their clothes, the manager or person seeing them rented, said, "You could put a curtain over one little area and you can keep your clothes there."

Mr. Chairman: Are there any other questions that we wish to ask of these witnesses?

Mr. Fink: Can one of the witnesses reply to Mr. McQuarrie's question to Alderman Johnston?

Mr. Chairman: Yes, that would be fine.

Mr. Fink: Regarding the question of rezoning, the city put its best legal minds together on that two-year bylaw. Both the Ontario Divisional Court and the Ontario Court of Appeals stated that that attempt to coat over a demolition control in the guise of what type of units you can build is improper because the landlords have a clear right to demolish buildings within the procedures the city gives them. The right to demolish is enshrined to them and the city's rights in the Planning Act are not sufficient to prevent such a right to demolition.

It is one thing to have a prohibition as to having to receive a permit to demolish a building, but there is no right within the city, according to at least six judges now of the Ontario Supreme Court, to prevent demolition.

The other problem is that if the bylaws are changed to prevent multiple use of single-family dwellings at present in ward 11, there will be additional units created. However, they will come on stream slowly. They will not replace the housing we are afraid we are going to lose, which numbers in the hundreds, perhaps thousands of units.

A second problem is that those new units coming on stream from now single-family or perhaps in the future multiple-family homes, would not be covered by rent review. The people who are putting these new units on the market could put them on the market for \$750 a month, which is the going rate now for units not covered by rent review, and the people we are talking about who are sitting here in the audience today could not in any way afford that.

Not to mention the fact they may have to live in substandard types of accommodation such as basements, which are often damp without light. Although removing the single-family standard would help--though I know a lot of home owners would cry foul, it would help--but it would not help fast enough and it would not help the people who were trying to keep in these homes.

Let me just say one further thing. The cost to the government of building a unit over the top of a garage on Heath Street or building over top of Orchardview Public Library, is \$80,000. I do not know of any developer who can build a medium-sized rental unit for less than \$80,000.

So when these 160 units come down, the government of the province and the city are losing 160-odd units times \$80,000, because these units will never be replaced with low-cost housing except by the government. The government is losing tremendous amounts of money by letting this go.

It is in the government's interest to protect this rental stock, because if they do not, they are going to have to house the seniors somewhere else: in nursing homes, in hospitals, somewhere else. The seniors do not have the resources themselves, most of them, to find alternative housing.

The vacancy rate--I would just like to clear up from what Alderman Johnston said--is one unit in 14,000 in ward 11. The city did a survey. It is not one in 14,000 tenants trying to find a unit. There is a 0.07 per cent vacancy rate, which is no vacancy rate. The only way to find a unit in ward 11 is you give a few superintendents in various of the buildings some Crown Royal, and when a unit comes up you hope he remembers who gave the bottle to him.

Mrs. Gardner: In our building you wait until somebody dies and there are so many old people there, that is what is happening. When somebody dies you get an apartment.

Mr. Fink: There are just no vacancies. I do not know where Mr. Gee is going to put them all.

Alderman Johnston: There is one other comment I would like to make and it was a question I was asked initially by you, Mr. MacQuarrie, on the R-1 zoning.

We are talking about some of the most expensive real estate in town, the R-1 zoning in my ward. If you duplex those houses you would end up with rentals of at least \$1,000 to \$1,200 a month. You would not be providing affordable housing for the sort of people that we are worrying about.

Mr. MacQuarrie: By the same token, if they cannot look after those houses and they want to stay in the neighbourhood, you are forcing them, in effect, out of the neighbourhood. Your only solution is to provide more housing and more in the area if you are going to accommodate people who have lived in the area all their lives or for a lengthy period of time and who wish to continue to live there.

Alderman Johnston: Are you going to subsidize those rents? Do you want to be subsidizing rentals of \$1,000?

Mr. MacQuarrie: Do not forget, though, that some owners are people too.

Alderman Johnston: I do not forget that home owners are people. I listen to all my constituents.

Mr. MacQuarrie: The thing here, in dealing with the question of zoning, has been raised and dealt with in the Supreme Court from the Divisional Court's judgement in respect of a particular bylaw limiting the size of a site, if I recall the general tenor of the bylaw. Surely there are other zoning tools available to preserve-- You start off with official plans; you have zoning bylaws with permitted uses other than the zoning bylaws and you say, "That is the community we want to have."

Then you come along and say: "That is not the community we want to have. We want to change the zoning or the permitted use of this particular land, of this particular site, to keep that building there, regardless of what might be permitted under the zoning bylaw in respect of that site."

Fine. Change your bylaw to make that site conform with the particular building that is on it. Downzone--make the land in some ways uneconomic for us to do otherwise with it.

Mr. Murphy: The answer to that is that there is no real difference physically or in planning terms between an apartment and a condominium. If the province would allow the city to distinguish the use between apartment and condominium, there would be no problem with that.

Mr. MacQuarrie: Do not forget that the city has full control and is one of the consenting parties to condominium conversion and to the creation of condominium units.

Mr. Murphy: They do not have to consent when he tears the building down because the control of conversion is to the building, not to the site. That is why if he could have converted to condominium, he would have sought permission. What he is doing here is tearing the buildings down; then he has no control over it. For instance, if you wanted to make a zoning distinction between apartment and condominium, then what you are suggesting would work. But at the moment the city does not have that power.

Alderman Johnston: I think you are on another point. Why don't you point out once again in 95 per cent of the city now you can convert to duplexes. There is very little R-1 zoning. Most of it is in my ward. I have not heard of people on an affordability basis wanting to convert their houses into duplexes.

I am aware, however, of an enormous divorce rate in the area where the husband goes wherever husbands go. The wife is left there for a period of time and she finally, usually, either ends up in a long harangue with lawyers or she ends up in the strip on Yonge Street getting by. They do not usually get to keep the building to duplex it.

12:40 p.m.

I have a very wealthy ward. If you look at the houses there, they are very expensive houses: Forest Hill, north Toronto, Deer Park, Oriole Park--where Mr. McMurtry lives, where I live, where Mayor Crombie used to live--but I have not seen a great wish on the part of those people to convert their homes at this point in time.

Mr. MacQuarrie: I looked just outside your study area, close to the conveniences that the tenants there say they find desirable, and I assume that some of the white area is singles and duplexes.

Alderman Johnston: Yes, we have only shown you units of six or more.

Mr. MacQuarrie: I say to myself, as a potential means of providing more housing economically, would there be any--If that is R-1 zoning--

Alderman Johnston: No, it is not all R-1.

Mr. MacQuarrie: Would there be anything wrong with converting some of what might be single family dwellings to duplexes?

Alderman Johnston: Up the road in Rosedale, they sought a bylaw to convert very large houses into--I think it is called the Rosedale bylaw. It was suggested in a part of Forest Hill and it was categorically turned down. They do not wish to do it.

I think something like four per cent of the population--they must live largely in my ward in R-1 zoning--can afford to live in those big houses. I have no intention of stopping them. Maybe what I should have done is shown you the R-1 zoning. North of Lawrence it is not R-1. East of where I live, I am right next door to R-2. I wish I were in R-2 so I could convert my house; I cannot. R-1 is not that big an area.

Mr. MacQuarrie: If I think of the plight of the elderly homeowner, he wants to stay close to where he and his wife, or she and her husband and their family have grown up, close to the facilities that they have used all their life and the rest of it. They have one asset, their home.

Their incomes have taken the same slap as the other incomes of people over 65. What do you do with them?

Alderman Johnston: I will tell you, Mr. MacQuarrie. I have found that elderly people in general are most reluctant to seek assistance from the government.

Many were born before old age pension and they do not take advantage of Ontario home renewal programs. They are often very reluctant to expose themselves as not having enough disposable income, and they would rather close the lace curtains and keep it to themselves.

That is a problem. It is a problem with my own parents, and I do not know what to do about that. Nothing, I guess. You can lead a horse to water but you cannot make it drink.

Mr. MacQuarrie: The other thing, of course, is to provide alternate accommodation in the area, either in terms of apartment blocks or the rest. You have to take care of an ever-expanding population as well, do not forget.

Alderman Johnston: Mr. MacQuarrie, when I was elected, it was in the tide of reform in 1972, when we wanted to save neighbourhoods.

I have never opposed good planning and good development of rental units. I opposed the Oriole Park ratepayers on the Davisville yards. The Attorney General (Mr. McMurtry) will tell you the history of that one. It has had a very long history, but I felt it was a good process. It provided units. It was a nice design. It included 366 units of affordable or subsidized housing for seniors, and the process was a fair and good one. Everybody had a chance to get involved.

I cannot assure you more than I have that I have done everything I can do under present legislation, under present programs, under present subsidies, to encourage the building of housing in my ward.

I cannot tell Mr. Eaton that he ought to duplex his house, or tell the same thing to the sort of people who live in Forest Hill. I cannot tell them that. If he wishes--and there is a tide that sweeps us into doing away with R-1 zoning--I will go along with the tide, but I do not think they want to hear from me.

I am talking about affordable rental housing. I am glad everybody can afford to stay in those houses in Forest Hill; that is great. The tourist industry does well on it. They all go around Forest Hill and see a nice neighbourhood. It is a nice neighbourhood. It should be preserved, and I hope they can do it. But that is not what I am worried about. I am worried about elderly people, single women, single boys, and single parents who cannot afford to pay \$1,000 or \$2,000 rents, who cannot afford to buy townhouses.

The one at Avenue Road and Glengrove Avenue has 19 townhouses for \$300,000. He has dropped his prices now to \$200,000. Who can afford those prices? I cannot. Can you?

Mr. MacQuarrie: No. I think we all share your concerns. It is a question of what is an appropriate solution to the problem.

Alderman Johnston: I hope you do. The appropriate solution is to pass this bill and do it fast.

Mr. MacQuarrie: To my mind, passing a bill prohibiting the demolition of buildings, which, in some cases as I understand, and in quite a few cases, are nonconforming under the zoning bylaw, seems to me to be inconsistent on its face.

Alderman Johnston: You are the holder of the public purse, as am I. Mr. Fink just told you. It is absolutely crazy to keep on building subsidized housing and pull down low-rental housing in the crisis we have right now with a zero vacancy rate. It does not make economic sense, let alone any other sort of sense.

Mr. MacQuarrie: There is certainly merit to that argument. There is no question about it. But then why do your zoning bylaws permit otherwise?

Alderman Johnston: I do not know how to get it through.

Mr. Fink: The present zoning bylaw on Eglinton Avenue, for instance--790-840--prohibits a certain height. It has setback qualifications and square footage qualifications. But the landlord in his new condominium proposal had more or less complied with all those various zoning requirements.

Even if the city should downzone every last apartment site to R-1, they are still legal nonconforming use, so as long as the landlord's new building was more or less the same as his old building, he would still be allowed to tear down the old and replace it with the new. By doing that, as Mr. Murphy told you earlier, once the landlord has torn down the old, he is no longer caught by the city's condominium conversion bylaws because the old building no longer exists to be converted; it has disappeared.

The city has tried long and hard to come up with the best bylaw control to try to predict its housing stock. Mr. Gee and Mr. Sewell have now come up with what they call the replacement bylaw, where you cannot tear down 50 units without replacing 50 units. Mr. Blott has served the city with notice that he is going to take that case to court. If I was a betting man, I would bet on Mr. Blott.

The city has tried absolutely everything. Mr. Gee is a lawyer. Mr. Sewell is a lawyer. Mr. Sheppard is a lawyer. They are all aldermen. The city has able counsel. They cannot come up with anything to protect their housing stock.

I do not think they are lying to us. I do not think they are incompetent. That is why we are here. It is only the Legislature of this province that can give the city some muscle. Ms. Fish's bill gives the city some muscle.

Alderman Johnston: The city needs it very badly.

Mr. Brandt: Perhaps in the early part of your presentation you mentioned this, and if so, I apologize for missing it, but has the population of your ward gone down over the past number of years?

Alderman Johnston: No, I do not think it has.

Mr. Brandt: I know that in Metro the population has gone down rather substantially. A couple of numbers I would be interested in would be the population of the area and whether the average number of people living in the existing units has gone up or down.

There has been a trend provincially, where the number of people living in each dwelling unit, both single family and multiple family has gone down. I am wondering about, as an extension of Mr. MacQuarrie's question, whether there is any potential for doubling up as a result of the numbers you might be able to provide us with.

12:50 p.m.

Alderman Johnston: The planner could probably answer that better than I could, but I will give you an impression.

The schools in the area are not suffering from a decline in school population, which is an indication that it is not decreasing, unlike other areas of the city, except in North Preparatory School, which is in the yellow area.

Mrs. Gardner: But that is because of adult-only buildings.

Alderman Johnston: I am aware of doubling up, of people living together. Numbers of young people are living in accommodation that is probably illegal, as Alderman Sheppard said to you. I am not reporting them.

If they came to the attention of our building inspectors, they would have to be reported. In my area, I do not think the population is declining because they added a poll a couple of years ago in the election, which would mean that it is going up.

Is there anything else? Perhaps Mr. Tomlinson could give you more. It is a very stable area.

Mr. Tomlinson: It is certainly possible to have a declining population and a very tight housing market with strong demand because, when the number of households is going up and the number of children is going down, what you often have is a declining population. However, there are more and more households putting more and more pressure on the housing market.

I have been consulting with Mr. Fram, and he is anxious to have a point clarified on the nonconforming buildings. Are the buildings currently most threatened with demolition legally nonconforming, and could we fix the problem by making them conforming?

The nonconforming buildings are the ones that are much bigger now than what would be built to replace them. These are the least likely to be subject to demolition pressure just because it is less economical to tear down a large building and replace it with single houses or a much smaller building. For that reason, the red blocks on the map are all conforming in the sense that the redevelopment potential of the sites is greater than what is there now.

There has been one instance where there was a proposal to tear down an apartment building to build single-family row houses. For that reason, the demolition pressure could extend into the nonconforming buildings if it became an economically feasible proposition on a widespread basis to tear down apartments and put up single homes.

Alderman Johnston: Another point I do not think I made was that if you are going north on Avenue Road, just as you cross St. Clair Avenue West, you will see some pretty beautiful condominiums. A lot of those used to be single-family houses.

Now we are seeing rental accommodation, and at 609 Avenue Road--it is the small one on the right as you go north, next to another small building--those were filled with old people. God knows where they went. Again, we tried to keep them and house them and make sure they were all right. Those will come down and will not be replaced by rental housing; they will be replaced by condominiums. The condominium prices of those units are out of sight; \$250,000 for a unit is not unusual in that area.

Mr. MacQuarrie: It certainly strengthens the city's assessments.

Alderman Johnston: Hopefully, yes, until they appeal.

Mr. Chairman: Thank you very much. Are there any other people wishing to ask questions?

I would thank all of you for appearing in front of us today and two weeks ago. I want to thank the people here for showing interest and being very patient and very quiet with the proceedings. We normally break at one o'clock, so perhaps you might wish to file out.

I think the members of the committee have copies of a motion Mr. Renwick will be putting tomorrow, and we can discuss it first thing tomorrow when we meet following routine proceedings and immediately before we go into the Justice policy field estimates.

The committee adjourned at 12:54 p.m.

Lacking J-16-20, 1982.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
MUNICIPAL BOUNDARY NEGOTIATIONS AMENDMENT ACT
TUESDAY, JULY 6, 1982
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Breaugh, M. J. (Oshawa NDP) for Mr. Renwick
Epp, H. A. (Waterloo North L) for Mr. Breithaupt

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of Municipal
Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

From the Ministry of Municipal Affairs and Housing:

Martin, D. K., Manager, Organization Policy Section, Local
Government Organization Branch
McNeely, D. J., Manager, Land Management, Land Operators Branch

From the Ministry of the Attorney General:

Fader, J. A., Deputy Senior Legislative Counsel

Witnesses:

Conlin, J. B., Solicitor, Township of Tiny
Haig, D., Solicitor, Town of Midland
Warman, R. W., Alderman, Barrie

From the Township of Vespra:

Beamen, R., Solicitor
Mandel, L. H., Solicitor

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, July 6, 1982

The committee met at 3:25 p.m. in committee room 228.

MUNICIPAL BOUNDARY NEGOTIATIONS AMENDMENT ACT

Consideration of Bill 62, An Act to amend the Municipal Boundary Negotiations Act.

Mr. Chairman: Gentlemen, we have a quorum present. The standing orders call for seven members and we have seven members here. In view of the people with us today, I do not think it fair to wait for a representative from the third party.

You will see on the agenda we are having representations on Bill 62, An Act to amend the Municipal Boundary Negotiations Act, 1981. The instructions from the House are that we meet with the various witnesses today and we must report it back today.

We have three groups. The city of Barrie is also here with us but does not wish to make any representations. If the groups would limit their presentations to half an hour each, that would leave us more than half an hour for clause by clause. We will then have some time before six o'clock to deal with the two weeks of justice committee hearings coming up on Bill 11 starting next week, provided the House rises this week.

3:30 p.m.

Mr. Philip has asked me to discuss today how we deal with Bill Pr13. That is the city of Toronto demolition bill. We should bring everyone up to date on the Windsor bill, Bill Pr6, and also where the city of Kitchener pinball arcade bill stands.

Mr. Rotenberg is here on behalf of the Ministry of Municipal Affairs and Housing. Witnesses are chosen in first come, first served order. Whoever contacted the clerk first was put on first. Unless there are any further questions, may we have the town of Midland solicitor Mr. Haig? Is there anyone else with you?

Mr. Haig: No, Mr. Chairman.

Mr. Chairman: You are Douglas Haig, solicitor for the town of Midland?

Mr. Haig: That is correct,

Mr. Chairman: Carry on.

Mr. Haig: I have been instructed by the town of Midland to come before this committee to speak in support of Bill 62 and also generally to indicate my municipality's support of the provisions of the Municipal Boundary Negotiations Act. I do not intend to review the boundary problems that exist between Midland

and Tiny, except to say that in our view the problems are substantial and urgent.

Midland initiated annexation proceedings by bylaw 8127 in April 1981. That bylaw was in the usual form under the old procedures, section 14 of the Municipal Act. It was a bylaw to annex a portion of the township of Tiny to the town of Midland, the portion being the area that abuts on the present boundary on the west limit of Midland. Generally it was an area through which Highway 27 passes. It has now been renumbered Highway 93. It is totally within the township of Tiny.

There has been a long history of commercial development along both sides of that highway. It has created some pressures and problems because of commercial development. About 10 years ago the municipalities of Tiny and Midland, along with the town of Penetanguishene and the township of Tay, formed an area planning board. That board worked for about 10 years trying to sort out problems but, unfortunately when it came to the crunch issue of what controls would be imposed on the rural municipalities, they in effect refused to accept any real controls over their inherent right to zone their own lands.

About one year ago, both rural municipalities unilaterally withdrew from that planning board and the planning board has now been dissolved so that the valid and earnest attempts among these four municipalities at joint planning to resolve the problems have failed.

At about the same time, the township also issued a building permit to a very substantial developer to build a mall development of about 350,000 square feet in commercial floor space in this area bordering Midland. That area is larger than the combined total area of the commercial space in downtown Midland. It was the feeling of the Midland council that this was the ultimate result of the failure to be able to work out some sort of zoning to stop that sort of commercial development on the borders of Midland.

As a result, bylaw 8127 was enacted by the town in April 1981. Shortly after, the municipality heard that the province was pursuing legislation which was finally enacted as the Municipal Boundary Negotiations Act, and because Midland felt that was a better way to solve its problems than to go before the Ontario Municipal Board, the town of Midland made a firm decision not to proceed before the OMB but to wait for that negotiation process to become law.

There was one joint meeting between the town of Midland and the township of Tiny in May 1981 at which these matters were discussed. At that meeting, the mayor of Midland indicated to the reeve of Tiny that it was Midland's intention to pursue the negotiated process rather than going before the OMB.

When the Municipal Boundary Negotiations Act came into force February 1, 1982, Midland had already applied to the OMB for annexation and had deliberately deferred proceeding with it to await the negotiation process.

Midland had also, through its representatives, gone to the city of Brantford in the summer of 1981 to see what had happened there and to understand the process. As a result of those meetings in Brantford, we felt it was a better means of proceeding, it would be less costly, more amicable in its results and, of course, the whole process is to have the politicians of the area determine what should be the proper solution of the boundary problems in the area, rather than having a solution imposed by members of the OMB who may live in Toronto, St. Catharines or wherever, outside people who come in, listen to outside experts who come in on both sides, and then try to work out a solution.

Obviously, the problems in the Midland-Tiny area can be better resolved by politicians in the political process and we support the Municipal Boundary Negotiations Act. The one difficulty with the act is section 24 which, as you know, in its unfortunate wording provided that those municipalities in the transition state shall have their boundary negotiation determined by the OMB.

The purpose of this bill is to amend section 24 so that Midland would be in the same position as all other municipalities in the province. The possible result of the wording of section 24 as it is now is that a court could well interpret that section to mean it was mandatory for this matter to go before the OMB and be determined there.

Any other municipality in the province that is not in the position that Midland is in, and there are only about eight of us in this position, has a right to invoke this legislation. There is a possibility that unless Bill 62 is passed Midland will not have that right. It is my submission, basically and fundamentally, that we should be given this right, as are all other municipalities.

The other submission I would like to make is that historically a municipality has always had the right to repeal its bylaws and to revoke what it has enacted. I have been the solicitor for the town of Midland for 25 years or more. It has always been my experience that if the municipality passed the bylaw, it had the same right to repeal it. That should be the position we are in with respect to bylaw 8127, the bylaw we passed to apply to the Ontario Municipal Board for annexation.

Under the Interpretation Act of this province we have the right as a municipality, because we passed the bylaw, to repeal it. Subsection 27(g) of the Interpretation Act reads, "Where power is conferred to make bylaws...it includes power to alter or revoke the same from time to time and make others." That is the right that historically Midland has always had. If we passed bylaw 8127, we have the right to revoke it. We want to revoke it. We want to negotiate. It is our position and submission that we need Bill 62 to amend section 24 to invoke that historic right we have always had.

It may be that the township of Tiny, the township of Vespra or any other parties represented here are going to suggest to this committee that in some way Bill 62 has taken away some of their rights. I suggest to you that is not fact. Their rights have not

be abrogated in any sense whatsoever. If they have, they have only been changed to the same extent as any other municipality in Ontario to which this legislation applies.

3:40 p.m.

There are eight municipalities in Ontario which, because they applied to the OMB before February 1, 1982, have had their rights abrogated. The right that existed under the Interpretation Act and existed historically in Ontario as long as there have been municipal councils in Ontario has been that they could repeal bylaws they have enacted. There may be some penalties or some duties or costs involved in a repeal, but we are prepared to assume those.

The legislation in Bill 62 faces that problem and indicates clearly that if the township of Tiny, for example, can establish that it has incurred costs it would not have incurred otherwise, and that the town of Midland, in enacting a bylaw and then repealing it, has caused it some damage, we are prepared to take that matter to the Ontario Municipal Board, pursuant to Bill 62, and argue it out there.

There is no question about that. We want to act fairly. We are anxious to sit down as quickly as possible with the politicians in the township of Tiny and work out our problems. We have real, serious, urgent problems we want to resolve. We want to do it on a political level. We want to do it under the new legislation that is effective and we want the right, as all the other municipalities in Ontario have the right, to invoke that act. We can only do it if you pass Bill 62.

Mr. Epp: Mr. Haig, I certainly endorse the Municipal Boundary Negotiations Act. I spoke about it before it ever came into being and said we should have something of that nature. I spoke on it during second reading and so forth, and I certainly endorse it. I have some problem with what is happening here, though, because it seems to me we are getting retroactive legislation. You have embarked on one course of trying to resolve a boundary dispute, something that was in effect when you started, and now, due to additional legislation coming on the books, which I have indicated I very much support, all of a sudden you want to embark on another road. That is where I have a problem. That is one reason why this bill came before this committee, so you could make a presentation on it, as well as Vespra and Tiny township.

One of the comments I had before me, which is from Tiny township, is that the town of Midland has no need to accommodate a burgeoning population. You indicated earlier you are very much in need of Bill 62 so you can proceed down the road of negotiations because you obviously need this land. You have applied by way of the old legislation to get additional land. How do you account for the fact that somebody here tells me you don't need the land?

Mr. Haig: We don't need the land? I have deliberately kept away from the merits of an annexation or the merits between Midland and Tiny. If my friends address those problems perhaps you will give me an opportunity to reply, but I can assure you the

problems are very involved and complicated. I don't think we could even begin to discuss them in the time that has been allotted to me.

Let me say I think the issue is as much a question of jurisdiction as it is of acreage. The problem Midland has been faced with is a collapse of the planning process through the area board, because of the withdrawal from that board by the township. We have no avenue now to impose any controls over this bordering area. I think basically it is a question of jurisdiction. We don't want the downtown of Midland or the downtown of Penetanguishene wiped out by the same sort of commercial development along Highway 27 as occurred in Barrie. We don't think that is a proper thing. We don't think the province wants it. There has to be some better way for urban and rural municipalities to function than to have a rural municipality competing with the urban municipality by way of commercial development.

My answer to you, sir, is that there is a question of jurisdiction. Our position basically is that unless the Midland council has jurisdiction over both the commercial areas it cannot function to protect them both. It may even need the revenue from both to balance. What is happening is, if this type of mall development goes ahead, the township is not putting any municipal services in there, no hard services. There is no provision for municipal sewers or for municipal water. Yet the township is going to get a very high tax revenue from it. It is a golden opportunity for the farmers of Tiny. We do not dispute that. They have good arguments. They ask, "Why should we give up some of our jurisdiction over this land by allowing an area planning board to impose planning controls on our township?" When it came to the crunch, they would not agree to that.

Mr. Brandt: Mr. Chairman, I want to pursue for a moment the chronological order for my own information.

Effectively, Midland went to the Ontario Municipal Board in the normal process to get an adjustment of boundaries, as I understand what you said. Following that, the new act came into effect with respect to boundary negotiations.

Mr. Haig: We passed a bylaw. The way you start an annexation under section 14 in the Municipal Act is by the municipality passing a bylaw which, in effect, is an application to the board for an annexation. The bylaw was passed. The bylaw was sent to the OMB by way of application, but there was never a hearing. Nothing was done. The application went in. The reason it was not pursued was because, shortly after that happened, the province came forward and said, "We are going to go ahead with this legislation."

Mr. Brandt: I assume, in preparing the application, there would be certain preparatory costs that would occur to the township of Tiny and to Midland. There would be some startup machinery that would move into motion even with that application. In recognition of that, you said in your comments that Midland would be prepared to assume the costs that are associated with whatever occurred to the expense of Tiny during the period of time

up to the application to the OMB.

Mr. Haig: I did not quite say that, sir, with respect. What I said was we have no objection to the wording of Bill 62, which in section 1, adding subsection 24(3) to the act, says in part, "before the board has made an order finally determining the matter, and subject to such order as to costs as the board may make." In other words, if you pass Bill 62, that will give us the green light to go ahead. You have stopped us because of the wording you have in section 24, or it could be argued we have been stopped, and my friends from Tiny are suggesting we may have to go to the Supreme Court of Canada to determine what section 24 means. We don't want to go to the Supreme Court of Canada. We don't want to be in the position Barrie was in of spending half its mill rate on legal costs, much as it might affect my own personal position.

What I said, sir, or at least intended to say, is that we have no objection to the wording of subsection 24(3), and if the OMB in its wisdom says we owe the township of Tiny something because of its preparation, we will pay it. It will be an order of the board and we are prepared to abide by whatever order is made.

Mr. Brandt: But, in effect, you precipitated the initial action with respect to Tiny through an OMB application.

Mr. Haig: That is correct.

Mr. Brandt: Tiny is an innocent bystander. You are the urban municipality carrying out an intent to annex in this fashion. You have gone down the OMB road, and I think we appreciate certain costs then occur to both sides at that point, whatever they might be. Then the boundary negotiations legislation comes into effect and you change course. In other words, it is your determination rather than Tiny's that you have moved now from the OMB method of resolving this dispute to the Municipal Boundary Negotiations Act to resolve the dispute.

Mr. Haig: Because it is a better course.

Mr. Brandt: I was very much involved in that, sir, with the Association of Municipalities of Ontario, and I know the legislation rather well. Don't you think it follows logically that if there are costs to be apportioned at this time, Midland should agree to take the position that it will pay for the costs of whatever has been assumed by Tiny up to this point, since it was not its determination to go these two different routes? You don't agree with that, or do you?

3:50 p.m.

Mr. Haig: No, I agree that Midland is a responsible municipality and if the OMB orders us to pay X number of dollars we will pay it.

The other possibility, and I have no instructions to bind the municipality, is that reason may prevail in the Midland area, and that the municipalities of Midland and Tiny will not only agree to negotiate but will agree to whatever amount is a fair and

reasonable compensation to Tiny for its costs to date. We may not even have to have a hearing before the board. We are prepared to discuss that aspect with the township. We have to have some assurance that what we are paying had been incurred for this particular purpose, and that it was all wasted money.

Mr. Brandt: I have a question of the parliamentary assistant, Mr. Rotenberg. Does Bill 62 specifically address itself to the eight municipalities the solicitor has referred to?

Mr. Rotenberg: Yes, that is correct.

Mr. Brandt: Is it the intent of the ministry to find a way out of the dilemma of recovering those who were in route, so to speak, with the OMB so they will be able to shift with some ease into boundary negotiations of a type that is deemed to be somewhat superior to the OMB route? Is that essentially your position?

Mr. Rotenberg: Mr. Chairman, it is our position that Bill 147 last year allowed for that. The reason this bill is before you is because there are some municipalities, such as Tiny, which is taking Midland to court, saying that Bill 147 does not allow them to withdraw. It was never the intention of the bill or the ministry to force a municipality to continue with the OMB. The way we had interpreted section 24 of the old act was that if a matter is before the OMB then the OMB should hear it. It was not our intention, but it could be argued by lawyers that the bill does not say they cannot withdraw.

The matter now could be going before the courts, and the reason we have brought in Bill 62 is because, rather than have a matter settled in court one way or the other, we wanted to clarify the intention of the ministry without reference to any municipality. This intention was that, as previously, anyone could withdraw an application to OMB. As far as costs are concerned, that it is an entirely separate matter. Does that answer your question?

Mr. Brandt: Yes, that answers the question. In the interests of time, however, knowing how complicated these boundary negotiations are, I wonder if perhaps, through the chairman, we could be very cautious in not getting into the merits of whether an annexation of some kind should take place. That is for a different time, a different place and a different forum. This is the issue. I think we should stay with this issue. I just say that by way of a comment, Mr. Chairman.

Mr. Epp: Could I ask a supplementary, Mr. Chairman?

Mr. Chairman: Yes, go ahead.

Mr. Epp: Mr. Rotenberg, if they were to go the route of the Municipal Boundary Negotiations Act, if Tiny and Midland or any other two or more municipalities could not agree, what ultimately is the course?

Mr. Rotenberg: It is laid out in the bill, but if they

do not agree they could eventually end up before the OMB anyway.

Mr. Epp: We have seen here there has not been a lot of agreement between Midland and Tiny. They cannot even agree to proceed through the same course so, ultimately, they could waste a lot of time and end up going through the OMB anyway.

Mr. Rotenberg: Mr. Epp, if you remember the bill, they could end up at the OMB if it is referred there by the ministry or they could end up having the Legislature pass an act without agreement. They could also end up with the ministry deciding to drop the application if the negotiating process does not work. It does not necessarily end up at the OMB. It can end up with nothing. I think you have the bill in front of you. If you refer to section 13--

Mr. Epp: I do not have it, but I will send up for it.

Mr. Rotenberg: Section 13 of Bill 147 does indicate the options where it happens that half of the time there is no agreement. The point is that does not necessarily go to the OMB. It may, but it does not necessarily do so.

Mr. Chairman: Mr. Rotenberg, you wanted to make some comments.

Mr. Rotenberg: I will make comments later, Mr. Chairman, but I have a question for the solicitor for Midland to clarify. I gather from what he said that Midland's intentions are that if this bill does pass and it is permitted to withdraw from the Ontario Municipal Board your intentions are to apply for negotiations under the act. Can he tell me what his intentions are?

Mr. Haig: Yes, sir. The present intention in Midland is that if Bill 62 is enacted we would then make an application to the OMB to withdraw our previous application, suffer the payment of whatever costs the OMB may fix and then to negotiate.

As I have indicated to this committee, we are also prepared to negotiate the question of costs with Tiny without a reference to or a hearing before the OMB.

Mr. Rotenberg: With respect, is it your intention to proceed with an annexation application through the negotiating process rather than through the OMB process? Is that correct?

Mr. Haig: That is correct.

Mr. Rotenberg: Would you do that almost immediately?

Mr. Haig: Yes, sir. By way of timing, we have waited patiently for a year to have this bill come into force so we could get on with it. On February 1, we thought we would be able to begin, but because of the concern with the wording of section 24 we have now waited for Bill 62. We are patiently waiting, and hope that if this legislation or similar legislation is to be enacted it would be done during this session.

There is one other comment I might make, Mr. Chairman, in anticipation of what I believe may be an argument from the township. It is that I think there is some suggestion that Bill 62 should be amended to provide that our application can only go on the consent of the township. Let me say that if the only way you can annex from the township is with its consent there will not be any more annexations in Ontario.

What I am suggesting to this committee is that if there is any suggestion that Bill 62 should be amended so that our right to proceed is only with the consent of Tiny, you can be satisfied that we will not get that consent and we will be forced into a position that the Legislature never intended.

Mr. Breaugh: Mr. Chairman, I have a couple of questions for Mr. Haig. Since initially you were in agreement that the OMB would hear it, and since you have stated again today that if there were legal costs incurred you would be prepared to have the OMB arbitrate that and come to a decision, and since you may eventually wind up there anyway, what is the nature of your objection to having the original agreed-upon process continue? Is it simply that you feel your chances of winning the argument, so to speak, are better under this legislation than they would be before an OMB hearing?

Mr. Haig: We feel, fundamentally, that the proper way to solve the problem is pursuant to Bill 147. We already have a history of several annexation matters with the township of Tiny. One was on consent and one was opposed.

From my own experience, I can answer by saying that my experience and my opinion is that to bring a group of experts into an area to solve the boundary problems is not a good way to proceed.

The matter came to an absolute climax in the city of Barrie with the representatives of the township of Vespra. I do not know anything about the merits and details of that annexation, but it is obvious to everyone that the OMB hearing in that annexation was a shambles. The matter has gone all the way to the Supreme Court of Canada. It is still unresolved. We do not want to get into that situation. We feel that the politicians in Midland and the politicians in Tiny can come up with a good workable solution which will be better for everybody. When it is all over, the two municipalities will be able to get along side by side far better than if they fight their way through an OMB hearing.

That is what happened in Brantford. We went to Brantford and talked to them down there. We asked what happened. They had the same history of problems between the city and the township over a long period of time. Relationships got worse and worse, to the point where they could hardly talk to each other.

We had our ups and downs with Tiny. We have had periods of good relationships and then periods when it has been poor. We do not want to continue that. They told us in Brantford that as a result of the negotiation process they have never had a better relationship between those two municipalities. We want that. We

sincerely want that.

Mr. Breaugh: So the short answer to the question is yes?

Mr. Haig: Yes.

4 p.m.

Mr. Breaugh: Okay. Given the history of the township of Tiny, which is quite a famous township in Canadian law, of not giving up easily--for example on the separate school question where it rather made its mark in Canadian history--what possesses you to think they are going to give up easily on this one? Even if you had your way, even if you operated under the current legislation and came to some local political solution where the majority of elected people consented, what makes you think the township of Tiny would abandon its traditions and yield to that?

Mr. Haig: I can answer that by telling you what I learned in Brantford. They said they had a history that was worse than ours, a greater animosity, and yet they negotiated it. If they can do it, why can't we? There are some pretty reasonable people in Tiny and a few in Midland. Surely they can sit down and work this thing out. They did it in Brantford and they had a hell of a history down there, so why can't we do it in Midland and Tiny?

Mr. Breaugh: The difficulty I have with your town's position has nothing to do with the merits of what is being discussed here, it has only to do with the process. It seems to me that once both parties in a dispute agree upon a process you cannot pull back from that because in your opinion you have found a better way to do things. That works fine if both parties agree that is a better way to do it, but in arbitrating a dispute of this nature, if both parties are not in agreement that this is the way to handle it, I have some difficulty in believing it really is a better way to do it.

Mr. Haig: Let me answer it this way. In March 1981 when the Midland council passed that annexation bylaw there was no choice. If you were going to annex somebody in the spring of 1981, you did it under section 14 of the Municipal Act. We had no choice.

The other point is that there was no agreement. Tiny never said, "If you are going to grab us, you better do it under section 14." They never agreed to section 14. They have not agreed to anything. Why would they? There was no agreement. Do not say that Midland and Tiny agreed to do it one way and now we want to change our minds. We had no alternative. In March 1981, if you were going to do it, you did it under section 14 of the Municipal Act by an application to the Ontario Municipal Board. We did not have a choice until February 1, 1982, when this new bill came into force.

Mr. Breaugh: Who made the application?

Mr. Haig: What application?

Mr. Breaugh: The application to the OMB to hear it.

Mr. Haig: The town of Midland. You can make the application to negotiate under Bill 147 without any consent. You cannot get people to agree to be annexed. It goes against human nature. Why would the council of the township of Tiny say, "How much of us do you want?" It does not happen. Please do not amend Bill 62 to require a consent. The whole thing becomes redundant if you do that. It is like a minnow saying, "I consent to being swallowed by the big fish."

Mr. Breaugh: Just to pursue that point briefly, you said you had no choice, yet in my view I would say you did have a choice as to whether you would proceed with an application to the OMB and you made the choice to do so. The option was not to do so.

Mr. Haig: Not to annex.

Mr. Breaugh: Are you in reasonable agreement with that, that the council made the choice to proceed to the OMB and proceeded to make an application to do so?

Mr. Haig: They made a conscious decision that there had to be an annexation. The only way they could do that was under section 14 of the Municipal Act.

Mr. Brandt: That was all that was available at that time.

Mr. Haig: That was all that was available.

Mr. Breaugh: Of course, there was the other option, which is simply not to make an application.

Mr. Brandt: Of course, yes.

Mr. Haig: Not to annex?

Mr. Breaugh: Yes.

Mr. Brandt: But if they are going to annex, there was one route to go at that time, the OMB.

Mr. Breaugh: I have a question I would like to ask the parliamentary assistant, because it has been raised in debate in the House and again here today, about the number of applications that are affected. I would like to give him a chance to get on the record before the township of Tiny makes its presentation. Exactly how many applications are affected and how many are affected adversely? I believe the number eight has been bandied about. The submission I have identifies seven and identifies as its source the ministry itself. Perhaps we could just correct the record on that. Are there seven or eight? How many are adversely affected?

Mr. Rotenberg: My information is there are eight including this one; seven other than the Tiny-Midland dispute. As to how many are adversely affected, I think that is a matter of judgement. Whether someone is affected positively or adversely would be a matter of judgement for the people on both sides. My understanding is that two of them are proceeding at the OMB. That is the way people want to go. Others wish to withdraw from the OMB.

Mr. Breaugh: So the short answer to that question is that you do not know?

Mr. Rotenberg: As far as being adversely affected, that is a matter of opinion between various people. Some people say they are adversely affected and some are not. I do not know how you define who is adversely affected.

Mr. Breaugh: You do not know.

Mr. Rotenberg: I may have a different opinion as to whether the township of Tiny is adversely affected by this.

Mr. Breaugh: It takes you longer to say you do not know than it does me.

Mr. MacQuarrie: I take it that there are six who desire to withdraw from the section 14 proceedings?

Mr. Rotenberg: My understanding is that there are two who are proceeding before the OMB.

Mr. MacQuarrie: What about the other six?

Mr. Rotenberg: Six of the applicants wish to withdraw, but in this case the other party does not wish to withdraw. While the next deputation is here, I will get a proper list and proper numbers from the staff. If you want it, we will get it for you, no problem.

Mr. MacQuarrie: But there are a number who want to withdraw from the OMB proceedings?

Mr. Rotenberg: Yes.

Mr. Eves: Mr. Chairman, I have a question of the parliamentary assistant. In the proposed subsection 24(3), why is the section worded the way it is with respect to costs as opposed to perhaps being worded that the municipality that has filed the application and in turn is unilaterally deciding to withdraw the application is responsible for costs? Why would the section not be worded so as to make that municipality responsible for the costs as may be determined by the OMB?

Mr. Rotenberg: If you are giving the OMB the power to cost an application, to award costs, then I think you have to give it the power to award costs. There may be a situation where I am not too sure which way the costs would go. It is up to the OMB to award costs. It would seem in this particular case that the costs will be awarded to Tiny against Midland. I do not know, I am not a lawyer, but when you allow a court to award costs you simply allow it to award costs, you do not decide which one gets it and which one does not.

Mr. MacQuarrie: There are so many factors to be taken into account in costs as well.

Mr. Eves: I appreciate that, except this is being unilaterally decided by one party to the dispute.

Mr. Rotenberg: This is drawn up by the lawyers. This is the same as all situations where there are costs, the body of the court or the board awards costs and it is up to them to determine. We cannot prejudice or put any fetters on the OMB as to how it will award costs.

Mr. Brandt: That makes eminent sense.

Mr. Rotenberg: I am sorry to be sensible. It is not too usual, but I try.

Mr. Brandt: No, I am saying what my colleague Mr. Eves has said makes eminent sense, because as I read this, the whole purpose of section 62 is to allow a municipality that has made an application to change course and go to boundary negotiations.

The defenceless second party in this whole issue is the township of Tiny. It will always be one of the eight that are in the "noes" so to speak. There are eight parties who are awaiting the action of the initiator. The initiator is the one who makes the original application and then decides to withdraw. Tiny has had nothing to do with this up to this point. I have been on the other side of boundary negotiations. All they have been doing at this point is responding. So it would make sense that some kind of cost factor should be built into this for whoever wants to change course.

Mr. Rotenberg: You are totally correct and the bill provides for the OMB to award costs.

Mr. Brandt: It does not say it in quite that way.

Mr. Rotenberg: You and I as nonlawyers would agree, but the lawyers tell me this is the way it has to be done.

Mr. Brandt: Let me hear the lawyers say that.

Mr. Mitchell: When you have presented a bill in the House, have you never gone against recommendations when it comes to certain amendments?

Mr. Rotenberg: On policy, yes, but on legalities, very seldom.

Mr. Mitchell: What are we talking about here?

Mr. Rotenberg: I do not understand the point or the burden of the question. The bill does allow the OMB to award costs.

Mr. Mitchell: The question being raised is the party who initiated and now is unilaterally, to use Mr. Eves's words--

Mr. Rotenberg: On the other side of that coin, not discussing these two municipalities, but in a case where a

municipality wants to withdraw and the other side, by taking certain actions, delays the matter and causes costs to the first municipality, there could be a situation where the second party may have caused some of the costs; therefore, some of the costs may be awarded against him. That is why it is written this way. So not necessarily all the costs will be assessed against the party that made the original application to withdraw.

The Vice-Chairman: Thank you very much, Mr. Haig.

Mr. Haig: Thank you, Mr. Chairman.

The Vice-Chairman: Next on the agenda are witnesses scheduled from the township of Vespra: Mr. Mandel and Mr. Beaman.

Mr. Mandel: Thank you, Mr. Chairman. My name is Lawrence Mandel and this is Mr. Beaman.

We wanted to file some documents and we were told to make 20 copies if we wanted to do that. It is just some correspondence and I wonder if it would be in order for me to hand this out.

The Vice-Chairman: Yes, fine. I guess the clerk is outside. Just hand them around. I might say to the people in the room, if you wish to come up and have a cup of coffee, if you would do it one at a time, you can come up and then take it back to your seat.

Mr. Breaugh: Leave the proper seven per cent sales tax on the counter.

The Vice-Chairman: No sales tax inside this room. Mr. Mandel, would you carry on, please.

Mr. Mandel: Mr. Chairman, as you know, I am counsel for the township of Vespra. Vespra is at present in the midst of an Ontario Municipal Board proceeding with Barrie. That proceeding has undergone certain court decisions right up to the Supreme Court of Canada and, as a result of those court decisions, it is now to return to the OMB.

Under the Municipal Act, Vespra had a right, which it exercised, to object to being annexed by Barrie. It exercised that right and it wishes to maintain and persevere in that right in front of the OMB.

With the greatest respect to Mr. Rotenberg, when the Municipal Boundary Negotiations Act was passed, it is clear from the debates in Hansard and from what the act originally stated that the original intention was that all applications that were before the OMB proceed before the OMB.

Just to demonstrate that, section 24 of the act as it was originally passed deals with when a matter is to be deemed to be withdrawn. When section 24 of the Municipal Boundary Negotiations Act was originally passed--I do not know if you have the original section in front of you; I am not talking about Bill 62, I am

talking about the original section.

Mr. Epp: Bill 147, section 24.

Mr. Mandel: Bill 147, section 24. All the wording before the words "but unless," starting with "Notwithstanding subsection 23(3)" up to and including the word "apply," which is the first word in the fourth line from the bottom; that was the way that section originally read. Then there were debates and in those debates, and I want to quote from--

Mr. Rotenberg: Did I say something then?

Mr. Mandel: I am afraid, Mr. Rotenberg, you might have said something here.

Mr. Breaugh: That is the rotten thing about Hansard. They write it all down. It is disgusting.

Mr. Mandel: December 17, 1981 at page 4785. This is in regard to the section of the statute without the words, "but unless the board has made an order finally..." etc. Mr. Rotenberg said, in response to certain questions, "We are saying those before the board being dealt with by the board will be under the old rules and not under the rules of this act." He goes on to say: "...the provisions of this act will not apply to those annexations. Those sections of the Municipal Act will apply to those annexations."

In other words, anything now in process before the board is under the old rules. Someone said, "Now, wait a minute." I can give you my copy.

Mr. Chairman: Was that David Rotenberg? It was not a person by another first name.

Mr. Brandt: You are on your own now, David.

Mr. Breaugh: Maybe the former parliamentary assistant--

Mr. Epp: Now we know why he did not want to come to committee.

Mr. Breaugh: Do you want to resign now, David?

Interjections.

Mr. Swart: You can be sure the minister would never get caught in that position; he never handles any bills.

Mr. Mandel: Mr. Chairman, it does not end there.

Mr. Breaugh: Let's hear more; this is getting interesting now.

Mr. Mandel: The portion of the debate that I read ends there. But then what happens as a result of that debate, as a

result of what was reported in Hansard? The words, "...but unless the board has made an order finally determining the matter within two years of the date this act comes into force, the application shall be deemed to have been withdrawn."

So originally, according to what was said in Hansard, the rule was: If you are before the board, you stay there. Then, as a result of further discussion, the original section was modified to state if the board does not make the decision within two years from the date this act comes into force, then it is withdrawn. So that section dealt with the problem of retroactivity and it was designed specifically not to be retroactive. It was designed with the specific intention that anything before the board when this act came into being, stays with the Ontario Municipal Board. It is only subsequently that you have this Bill 62 which completely changes that situation.

Members of the committee, we all know--and perhaps it is trite to say--that, be it a court, a legislative committee or a football game, you do not change the rules in the middle of the game. It is a trite principle and it is applicable in all walks of life. You do not change the rules in the middle of the game.

The situation with Vespra is perhaps a little different than the situation with all the other municipalities involved with annexation. Mr. Rotenberg said there were eight; there may be seven or there may be eight. But Vespra's situation is somewhat different. In fact, it is greatly different because Vespra has been into it tooth and nail. It has been before the Ontario Municipal Board and it still wants to maintain its rights before the Ontario Municipal Board.

This proposed bill must be read very carefully. It says that the applicant "may, at any time, before the board has made an order finally determining the matter...withdraw..." What does that wording, "the board has made an order finally determining the matter" mean? It means that you have to go to the Municipal Act and the Municipal Act states--if I can just give you the sections quickly because we do not want to get into an academic discussion here. It is section 14. Basically you are looking at subsections 14 (20) and (24).

What that means is a final order is not made by the board until after the following: One, it makes a decision and, two, it has to wait 28 days before making a final order pursuant to that decision, because within 28 days, people have a right to object to cabinet in regard to that decision. If people make an objection to cabinet in regard to that decision, there still is no final order made and cabinet can dispose of the decision in the way it sees fit, pursuant to the Municipal Act.

4:20 p.m.

What that means--and this is what is very sinister; unintended, I am sure, but it has a sinister effect--is that if Barrie does not like the way things are going in front of the Ontario Municipal Board, it can say: "We withdraw. We will try

another route." Worse, if Barrie gets an adverse decision from the Ontario Municipal Board saying, "You lose; Vespra wins," Barrie can say: "Hold it. We withdraw. We want to go the negotiation route." There is nothing to stop it. The legislation provides for it.

It does not stop there. Only the applicant, Barrie, has the right to withdraw. If Vespra, the respondent, wants to withdraw, it loses. Game over. If Vespra withdraws, Vespra loses, and it is Vespra that is trying to maintain what it already has. The odds are stacked in favour of the annexer; the odds are stacked against the annexe; the rules are stacked against the person who is trying to preserve what he already has.

I do not know of any legislation anywhere that provides retroactively an advantage to one party over another in the middle of a proceeding where the parties are at loggerheads. This is the first piece of legislation I have ever seen. I am sure it is an accident, but the accident should not be allowed to proceed. It is vicious, it is unintended and it is unfair.

The problem with the legislation is that, in my respectful submission, the minister erred in only worrying about the rights of the applicant. He forgot about the rights of the respondent. And remember, it is the respondent that gets hurt here. It is the respondent that is fighting for what it already has. The respondent is simply saying: "Leave me alone. Let me maintain the status quo." It is the applicant that is saying, "No, we want more."

There was some suggestion, I believe, by Mr. Haig, who is acting for Midland--and I have no dispute with Midland. I am acting for Vespra and the dispute is with Barrie. But, of course, he takes an opposite approach in regard to Bill 62. He said something about: "Well, you can repeal a bylaw; anybody can repeal a bylaw, and under the Interpretation Act, the municipality is allowed to repeal a bylaw." With the greatest respect, let us not get fooled by that red herring. Of course, you can withdraw and if you withdraw, you lose. But not under this act. Under this act, you do not lose; you have another route. So let us not get fooled by the fact that under the Interpretation Act one has the right to repeal bylaws.

Normally when you withdraw, be it in a court room, or anywhere else, you lose and you pay costs for forcing the other side to go through the time and preparation. Once again, at the risk of repetition, in this instance only one side has the option.

It is my respectful submission that the Legislature does not intend to pass an act giving one party an unfair advantage over another. I am sure that was not its intention, but that is what has happened. But why did Bill 62 come about in the face of what went on as reported in Hansard where, with the greatest respect, Mr. Rotenberg said, "When you are before the board, you stay before the board"? The initial legislation itself said the same thing; the initial legislation said, "You shall proceed before the board." It says, "The board shall hear and determine..." and

everyone knows what "shall hear and determine" means. That is mandatory as opposed to "may." And it dealt with the question of withdrawal. If the board does not make a decision in two years, the application is deemed to be withdrawn. So it dealt with that. The original intention was that you proceed before the board.

What happened here was that the city of Barrie and, I believe, Midland passed bylaws. The bylaw for Barrie was bylaw 82-25, and I believe it was passed on February 8, 1982. Notwithstanding the Ontario Municipal Board proceeding that it was involved in, it said, "We want to proceed under the Municipal Boundary Negotiations Act." This was before proposed Bill 62. I am trying to give you the dates here. Vespra launched a court application to declare that bylaw null and void. Barrie saw the light and repealed the bylaw. After Barrie repealed the bylaw, we had Bill 62, which allows Barrie now to pass that type of bylaw if it wants it, if Bill 62 is passed.

You can see that Barrie thought it may have had a right to change the rules in midstream and exercised it, but found out it did not have the right, in view of the court application, and withdrew it. You can see how Barrie may play the game if Bill 62 is passed and you do give it the right. What a beautiful position for an adverse party to be in. He can sit there and at any time he can withdraw and utilize the services under the Municipal Boundary Negotiations Act. All he has to do is get bad vibes from the Ontario Municipal Board or wait for a bad decision and he can say: "Stop! I want to go the other route."

Mr. Chairman and members of the committee, in all equity and fairness, you cannot pass that bill or recommend that bill be passed as it stands at present. The recommendation that I would have in regard to proposed Bill 62 is really as follows.

First of all, Barrie and Vespra should be made exceptions to that bill if it is going to be passed. It should not apply to Barrie and Vespra, because Barrie and Vespra are in the heat of battle. It is not just a matter of an application being filed here; they have been in front of the OMB for a long time, and Vespra wants to stay there.

If this act is to be passed, notwithstanding our submissions, there should be an exception that it does not apply to Barrie and Vespra; that the OMB proceedings continue as far as Barrie and Vespra are concerned. That is one.

In any event, if you intend to pass that bill, people who are before the board at present should only go elsewhere on consent. Let us not get confused by the word "consent." I believe Mr. Haig was saying, "Nobody will ever consent." Well, then you proceed with the board. Nobody is being deprived of anything here. If Midland or Barrie is before the board, it has rights to exercise before the board. It will win or lose on an annexation. All we are saying as the respondent--who has rights, we hope--is that if you want to go before the minister and change the rules of the game, do it with our consent. If we consent, then we will go before the minister; the legislation can provide for that. But if

we do not consent, then finish what you started, please; finish with the board hearing. That is all that is being asked there, and that is patently fair.

If you still intend to recommend passage of Bill 62, then I must discuss this question of costs, and it had come up in a prior discussion. Let no one be fooled on the issue of costs here. Costs will not automatically follow. You are leaving costs, whether they be paid or not--and I am not talking about the amount; I am talking whether one penny cost be paid--to the discretion of the board. The costs do not automatically get paid in this case.

Suppose, after all this work, Vespra, which has been in front of the board for I do not know how many months, has to be subjected to the unilateral withdrawal by Barrie. Vespra does not automatically get costs. It says the board may make an order as to costs. That is up to the board. There is no automatic right to costs here.

4:30 p.m.

You are not doing anything new, because the board always has had jurisdiction to award costs. Even if you did not have that in here, under the Ontario Municipal Board Act the board can award costs anyway. You are not doing anybody any favours. You are not giving the respondent--the fall guy, if I can use that term--any more rights in that section than he already had, because the Ontario Municipal Board can award costs in any event.

At the very least you must make the provision in regard to the award for costs mandatory. As far as the amount is concerned, that does not have to be decided by the board; that can be decided by the taxing officer over at Osgoode Hall. That is all the board normally does anyway when it awards costs; it says: "Costs? The taxing officer will decide it." The board very rarely decides a big issue on costs. If it awards costs, it leaves it to the taxing officer to decide.

Not only is an injustice being done in fact by this bill, but it also appears manifestly to be done. Sometimes you can have an injustice but it does not appear unjust. This one has both evils. It appears to be unjust and it is unjust. I have dealt with why it is unjust. As to why it also appears to be unjust, why it has that manifest appearance of injustice, why justice will not appear to be done if you pass this bill, I cite the following reasons--and I say this with the greatest of respect to the ministry.

The Ministry of Municipal Affairs and Housing is sponsoring a retroactive law, Bill 62, affecting existing rights of parties in the midst of an Ontario Municipal Board hearing and in doing so gives an option, an advantage, to one party against the right of the other party. It allows, and it is seen to allow, one party to play with the rights of the other party, given the option to withdraw at any time.

It is giving the option to the applicant, which is Barrie,

which is the annexer, and it has been demonstrated that Barrie is anxious to take advantage of that option, because it passed bylaw 82-25, which I told you about, in February.

These are all things that have happened, and what is the appearance? How does Vespra feel about this? And when Barrie repealed the bylaw because of the force of a court application, proposed Bill 62 came along to ensure, amongst other things, that Barrie will have the right to pass such a bylaw.

With all this inequity and injustice, the appearance of inequity and injustice, all being sponsored by the Minister of Municipal Affairs and Housing (Mr. Bennett), I say with the greatest respect, in the end with regard to this bill we have the minister as the ultimate arbiter as to what happens in regard to this annexation.

Do you see what has happened? This act, which is a good act--no one is complaining about the act itself; it is what has occurred here and the manifestation of what is going on that is being complained about--this act, with all these injustices, albeit by mistake perhaps, nevertheless is all being sponsored by the very person who decides in the end.

The minister is the ultimate arbiter under this act. I see Mr. Rotenberg shaking his head. The minister can at his option send it to the Ontario Municipal Board or he can send it to a fact-finder, but in the end the minister has the ultimate responsibility and can decide. He does not have to send it to the Ontario Municipal Board. In the end, he is the ultimate arbiter. In my respectful submission, that whole process has an appearance of injustice, and justice is not being seen to be done.

As to general principles and guidelines, I can only submit the following. Whenever a law is being changed, it should not retroactively affect adversely a substantive right which is in the midst of being exercised, in this case the right of Vespra to maintain and persevere in its objection before the OMB.

Whenever a law is being changed, one does not normally allow a party to an existing proceeding under way to have the option of choosing whether to take the new law or to continue with the old law. You do not give those options out when a law is being changed, especially when the option is to the detriment or against the wishes of the other adverse party, in this case Vespra, and especially when Vespra does not have such a choice itself.

The options you are giving to Barrie or to any other annexing municipality make for uncertainty and unfairness. Why do I say "uncertainty"? Because if we go back to the Ontario Municipal Board and if Bill 62 is passed, then we have to ask ourselves while that Ontario Municipal Board is proceeding: "Gee, we're doing well. I wonder if they are going to withdraw tomorrow. I wonder if I should bother preparing tonight, because I wonder if Barrie is going to withdraw tomorrow." Total uncertainty. That is no way to run a ship.

"Gee, did I get a good or bad decision?" Well, we know one thing. Under Bill 62, if Barrie gets a bad decision, it can withdraw. If Vespra in front of the Ontario Municipal Board gets a bad decision, it cannot withdraw. Vespra cannot say: "Hey, forget it. I want to go on to this act." But Barrie can.

Mr. Chairman, at the risk of exhausting you and the members of the committee, I can only say that I know this committee will not allow any bill which in fact is unjust and any bill which has the manifest appearance of causing injustice--I know this committee will not recommend that such a bill be passed.

Mr. Breaugh: Mr. Chairman, I have a number of questions I would like to ask these two gentlemen but, first and foremost, I think it only fair that the parliamentary assistant be given the opportunity, given his clear intention on the previous legislation, to withdraw this bill.

Mr. Chairman: Mr. Breaugh, are you asking the parliamentary assistant to respond to Mr. Mandel's comments or simply to give you a brief comment yes or no?

Mr. Breaugh: It has been clearly demonstrated that in the previous legislation the parliamentary assistant made--

Mr. Chairman: No. You are giving your argument now. But what do you--

Mr. Breaugh: No, I am not giving an argument. I am giving the parliamentary assistant an opportunity to withdraw the bill.

Mr. Rotenberg: I would disagree with your interpretation as I disagree with Mr. Mandel's interpretation of what I said a year ago. When my time comes, I will explain why his interpretation of my remarks is not correct.

Mr. Chairman: Thank you. And would you try to make it a little shortish?

Mr. Breaugh: I will get shorter than you would care to be.

It had occurred to me that on a previous occasion there was some difficulty in proceeding with legislation like Bill 62, where there were matters in dispute before the Ontario Municipal Board. It has just been brought to the committee's attention that this very clearly is in focus.

The House has a rule, called sub judice, which says you cannot proceed with matters that are currently before a court or a tribunal, and it seems to me that the Ontario Municipal Board is precisely within the confines of that sub judice rule.

I would like a ruling from the chair as to whether this bill can proceed now, because it seems to me it has been clearly demonstrated that this matter is in the middle of a dispute before

an agency which is very much like a court, and that is the Ontario Municipal Board, and that the rules of the House are explicit on the matter, that this should not be proceeded with at this time. I want a ruling from the chair on whether it can or cannot proceed.

Mr. Epp: I might add that the Attorney General is out of the country, I understand, but he often has cited that rule and I would think that the chairman, who is also a lawyer, would agree. He certainly has agreed with the Attorney General's rulings in the past. The municipal board is a quasi-judicial body, and I am sure that he would agree with the member who pointed that out, that we should not proceed any further on this.

4:40 p.m.

Mr. Chairman: I thank the members for their assurance and their surety in my opinion. First, let me say that I have never really known whether the Attorney General was, in my opinion, correct or incorrect. Remember the Re-Mor matters. He made certain recommendations to the committee that it should or should not carry on with its deliberations in view of sub judice, therefore, it is really up to this committee.

I will rule that, no, sub judice should not stop us. If the committee, as a group, wishes to challenge that and say, "Sub judice rule, stop. We should not carry on," fine. But I am not prepared to say at this point that this committee should stop. In view of the fact that the House has told us to meet and report back today on this bill, I am not prepared to exercise my discretion against the House. I am, of course, open to a challenge.

Mr. Breaugh: Okay, I will fulfil your desire here. I understand you are begging the challenge of the chair. I will do that and I would appreciate the chance to make a brief argument in that regard.

Mr. Chairman: Excuse me. In view of what is occurring I think I will have the clerk, while the House is in session, get authority for this committee to sit in the eight to 10:30 hours tonight, because I have a feeling we are not going to reach our destination by 6 o'clock. We have authority to sit only until six, although we could report after.

Mr. Epp: Mr. Chairman, it may be written there but I am not sure that decision was part of the decision made in the House because I was there when it was referred. We said one day's hearing. Nobody said it had to be over by six o'clock. The House often sits until 10:30. So in the context of when the House usually sits, as long as we sat within one day and did not extend it beyond that day, I see no reason why we have to go back to the House. I am not opposed to going back to the House. I just do not find it necessary to go back unless you have some rule there that I am not aware of and that was not discussed in the House.

Mr. Chairman: I did get a little information from Smirle Forsyth last night. I asked about this in view of the time and it was his opinion that we only had authority to sit and deal with

witnesses during the afternoon session but that we could do clause by clause after. I can see what is happening. I do not want to run at five minutes to six and try to get something through the House. I would like to anticipate the trouble. I am going mainly by what that clerk advised me in sort of an unofficial discussion last night.

Mr. Breaugh: I would be in agreement that about 5:30 the committee might entertain a motion to extend into this evening's session and we then put the motion in the House. Can we dispense with this point of order, because I do not sense that a long debate is necessary?

It seems to me we were given direction by the House to deal with a piece of legislation. The members were not aware that there are, in fact, proceedings under way now. We have just been made aware by this representation that those proceedings are going forward in front of the Ontario Municipal Board, that they are in the middle of that process. Notwithstanding the directions given by the House to the committee, we have just discovered that there is a dispute under way which will be affected by this legislation. That clearly falls within anybody's definition of sub judice. It seems to me that the committee has an obligation to recognize that and that you cannot dispute the facts which have been put before you this afternoon.

The matter is in the process of being heard. The legislation before you is clearly sub judice and we have just been made aware of that. We were not previously. We have an obligation now to report to the House that it is our understanding that this matter should not now be considered by the committee and we cannot proceed with it.

Mr. Rotenberg: Mr. Chairman, can I speak to the point of order very briefly? As I understand it, the sub judice rule--and I have received advice from legislative counsel--can prevent a body such as the Legislature from discussing a matter before a court and the details of that. But the sub judice rule has never prevented a Legislature from acting and passing legislation. Legislatures have passed legislation that affects matters which were then before the courts. If that were the rule, there is always something before the courts dealing with something. My understanding is that legislatures cannot be precluded from passing legislation, which is different from discussing details of a case before a court.

Mr. Epp: Further to that point of order, I think the parliamentary assistant is correct. It does not prevent us from discussing it. We can discuss it at any time we wish, because this is the highest court in the province. The problem is that we may jeopardize the proceedings before the courts by discussing it here. That is a problem where they have to go back to square one, because some of them are already in progress. That is where the problem is as far as sub judice. I am, of course, subject to some of my learned friends around here who are lawyers but that is as understand it; not that we cannot do it but that we may jeopardize those hearings.

Mr. McLean: Mr. Chairman, if we could get on with what we have been doing we could be done by 5:30, and if we have to meet in the evening we could decide at that time. We are just wasting a lot of time here.

Mr. MacQuarrie: Mr. Chairman, I certainly feel it is within this committee's competence to deal with the bill, notwithstanding the fact that there may be one or more applications pending before the Ontario Municipal Board. The main intent of the bill, as I understand it, is to tidy up a section of the Municipal Boundary Negotiations Act that was not clear. I do not see any reason why we should not proceed to discuss the merits of the bill and explore them quite fully.

We are hearing some very interesting presentations today. They certainly are helpful presentations. But I do not think there is any reason to call the meeting of this committee off in so far as it affects the bill.

Mr. Breaugh: Even if it is before the OMB now?

Mr. MacQuarrie: Even if it is before the OMB now, notwithstanding the fact that there might be one or more. I do not know how many applications there might be.

Mr. Breaugh: My God, you have a perverted notion of the law.

Mr. Chairman: The clerk has clarified that we only have authority to sit on this bill in the afternoon. I could report it tonight but we only have authority to sit this afternoon. We are in the middle of a question but I will bring that up in a minute. Thank you, Mr. Epp. Before I put the question, any other comments?

It is a challenge to my ruling. I rule that the committee can carry on and should not be stopped under any rule of sub judice. Mr. Breaugh has challenged that ruling.

All those in favour of Mr. Breaugh's challenge please raise your hands?

All those opposed please raise your hands?

The challenge fails.

Mr. Chairman: Mr. Epp moves that the clerk ask the permission of the House for authority to sit, if necessary, tonight.

Mr. Epp: Can I just ask a question? We have another bill in the House that is coming up tonight in committee of the whole House. It is Bill 29. Mr. Rotenberg, Mr. Breaugh and myself are involved in that. We will also be involved here. I do not want my motion to preclude us from maybe going through until 6:30 or 7 o'clock and maybe finishing up in that form, rather than to come at 8 o'clock and start again.

Mr. Chairman: We have OSSTF at seven over the dinner hour. I know we have at least that, and maybe other things between six and eight.

Mr. Epp: Whatever the committee decides later, I just did not want our motion to the House to preclude us from doing that.

Mr. Chairman: No, I would think all we are seeking is authority. We could then determine our own rules after we had that authority. It is really just to get the authority.

All those in favour of Mr. Epp's motion please raise your hands? Seven.

All those opposed? Two.

Motion agreed to.

4:50 p.m.

Mr. Chairman: Where were we?

Mr. Breaugh: We were about to question the witnesses.

Mr. Chairman: Yes, we were. Mr. Breaugh, would you carry on please?

Mr. Breaugh: My first logical question to you, Mr. Mandel, is, would you now attempt to challenge the legality of the House proceeding with legislation which is not only contrary to the original stated intent, but which in fact interferes with your legal right to appear before the Ontario Municipal Board?

Mr. Mandel: We will take whatever routes are available. I would have to search the point, but if that point is available we will take whatever route is available to protect the rights of Vespra township and go on with what it wants to do; namely, maintain its right of objection before the OMB.

Mr. Breaugh: I take it you have done considerable research to establish clearly the intention of the government in its previous bill and you began your actions and continued them, believing that the government, having stated that it does not want to be retroactive in its first piece of legislation, would remain true to what its stated intentions were and you operated on the assumption the government would not subsequently come in with a bill like Bill 62?

Mr. Mandel: In fairness, the proceedings before the OMB started well before the Municipal Boundary Negotiations Act was even discussed. The proceedings before the OMB were well in advance of that statute.

Mr. Breaugh: It was clear to me in the previous legislation, which established the principles of the boundary

negotiations act, that the government had dealt unequivocally with matters that were currently before the OMB. They said on more than one occasion, on the record and off the record, that it was not meant to interfere with actions currently under way, this would apply to future annexation procedures and, as a matter of fact, at that time the question of whether it was sub judice or not was raised and the way around that was to say, "We will not interfere with current actions before the OMB."

I have some difficulty now with the government's change of position on that, and I question the witnesses currently before us as to whether they have researched that intent and began and continued their actions understanding or thinking they understood that the government of Ontario would not change its position and would at least leave in place, with all of the assurances it gave in the previous debate, that their actions would remain untouched by any future legislation.

Mr. Mandel: It was certainly the township of Vespra's point of view that the proceeding before the board would remain untouched. In fact, when the Municipal Boundary Negotiations Act was first passed that was the intent, that it would remain untouched. When Barrie tried to pass the bylaw, Vespra tried to maintain its rights by bringing a court application to quash the bylaw and Barrie repealed it. Vespra felt, and still does feel, that it should be allowed to proceed before the board.

If your question is, are we relying on the statute remaining in such a way that we can proceed before the board; yes, we are. We proceeded before the board before the statute was passed and we continued the proceeding when the statute was passed. It is only this proposed Bill 62 which causes some problems.

Mr. Brandt: Mr. Chairman, I wanted to ask a question with respect to the other parties to the issue in the Barrie area. Do you know what their position is? There are other townships involved as well. Have they indicated to you their attitude with respect to this bill? They are in much the same position as you are.

Mr. Mandel: I think the other townships, or many of them, have settled. I should tell you this, it would be nice if everybody could settle. Attempts have been made between Vespra and Barrie to get it settled, but it just did not work.

I think the other townships have settled. I believe there are some ratepayers who have petitioned the cabinet in regard to the decision of the Ontario Municipal Board, but subsequently the decision of the OMB went to the Supreme Court of Canada and now it has to go back to the board again, as a result of the OMB decision.

Mr. Brandt: Could you elaborate a little bit on that? When you say "settled" do you mean that Barrie and the other municipalities have reached some kind of an accommodation, and that the only issue now outstanding before the Ontario Municipal Board is between Barrie and Vespra?

Mr. Mandel: I will let Mr. Beamen answer that, if I may. He is more familiar with it.

Mr. Beamen: Through you, Mr. Chairman, three townships were affected by the original Barrie application. Vespra was affected, fought it at the board and is still affected. Innisfil was affected, challenged it at the board and it was settled by a piece of legislation passed by the House. Innisfil has no more interest in this matter as it stands; the issues on annexation are settled.

The township of Oro was also affected and, as I recall, the application was dropped by Barrie in so far as it applied to Oro at the outset of the OMB hearing in 1976. So no other townships are currently affected in the Barrie application.

Mr. Brandt: Could you indicate what the time frame has been from the start to this point with respect to your negotiations with Barrie under the OMB? How long has it taken to this point?

Mr. Mandel: The entire proceedings?

Mr. Brandt: Yes.

Mr. Mandel: There were 27 days of hearing and three days of argument before the Ontario Municipal Board. That was in 1977.

Mr. Brandt: In 1977?

Mr. Mandel: Yes.

Mr. Brandt: That is when the application was originally launched by Barrie?

Mr. Mandel: No, the bylaw starting the annexation by Barrie was on April 26, 1976.

Mr. Brandt: I raise that question because part of the rationale for the new legislation has got to be some reflection on the old legislation and the problems. I do not want to make a long comment or to editorialize on the matter, but when you take a look at the time frame under which this whole battle is being fought--I quote words you used, "Finish what you started," and "An injustice has been done."

I think you could take the position that some injustice has been done to some innocent parties in the area, namely the taxpayers who have not had this issue resolved before the OMB. That is the sum and substance and the rationale behind why the new legislation was necessary.

It seems as though the matter of an OMB hearing, to settle what should be a reasonably simple boundary negotiation, albeit that I can understand the emotions in this kind of an issue, can go on ad infinitum. There must be some opportunity at some point for the whole thing to come to an end. Here we are, five or six

years later, and the matter has been not resolved before the OMB.

I am only suggesting the frustration that must be sensed by all parties has probably led Barrie to wish to withdraw from the OMB process and go to a new, sophisticated, more refined process that will perhaps bring an end to the whole thing.

Mr. Mandel: With great respect, sir, what happened in the Barrie proceeding was rather unique. It is not a typical annexation.

Mr. Brandt: It sure was not.

Mr. McLean: It was until the lawyers got involved.

Mr. Mandel: Kill all the lawyers.

Mr. Mitchell: You would wipe out half of this committee.

Mr. Mandel: As you know, in the Barrie case a letter was sent by one of the government ministers to the board and that blew the whole thing wide open. Then there were the Divisional Court applications and Court of Appeal appeals and leave to appeal to the Supreme Court of Canada and the Supreme Court of Canada had to hear it. That is what took all the time. By the time the Supreme Court of Canada decided on May 28, 1981, it had to go back to the board again.

Without analysing the statute, the Municipal Boundary Negotiations Act, things could happen in that statute, too, where it could take a long time to resolve. You can get involved in court applications. It is not the OMB process that took so long; it was the challenging in the courts of what the OMB did that took all the time. Similarly, any statute could suffer that problem, no matter how perfect the draftsmen. You could even run into that problem under your own legislation.

That length of time could take place on a negotiation. If somebody does something that is without jurisdiction, it can go through the courts right up to the Supreme Court of Canada. By the time it gets back to where it started, it would have taken three or four years.

Mr. Brandt: All right, as one who has been involved in this process over what I would suggest is a reasonably lengthy period of time, what is your estimate of costs to all the municipalities involved?

Mr. Mandel: Very expensive.

Mr. Brandt: I am well aware of that. I have heard figures of \$3 million. Could you give me a number?

5:00 p.m.

Mr. Mandel: It boggles the mind. I really could not give you a ball-park figure because it was a very expensive procedure.

There is no doubt about it, it was a very expensive procedure.

Mr. Brandt: But if you have not been able to solve the dispute, basically and fundamentally, your argument comes down to, we should stay with the OMB because we are with the OMB. We should not shift gears or move to another jurisdiction or another method of trying to resolve this dispute because the OMB application was originally launched--I have to repeat--back in 1976, and we should try to finalize it.

I would suggest to you that there has been more than sufficient time before the OMB, and the problem is that the OMB formula or methodology has not worked. That is the frustration. It simply has not worked.

Mr. Mandel: Sir, I can point to 10 court cases in my office right now that have been going since 1974 and still are not resolved. Does that mean the court system is not working? These things do take time.

Mr. Chairman: Yes.

Mr. Brandt: There is a saying in law about justice delayed--

Mr. Mandel: In any event, I am sure this House is not going to pass legislation to do the same in the courts as it is doing with this particular proceeding between Barrie and Vespra. All I can say to you is that this was a unique situation. The uniqueness of the situation has now been resolved by the Supreme Court of Canada.

In my submission, it would be a complete waste to throw aside the OMB now as the point that was at issue has been solved. The OMB can now do its job. It did its job, was reversed by the ultimate court--the Supreme Court of Canada--and now it can do its job in accordance with what the Supreme Court of Canada said. So, with the greatest respect, although that time frame is embarrassing to the system, there is a reason for it.

Mr. Brandt: Not only is the time frame embarrassing to the system but the cost is what really bothers me. It is fundamentally almost criminal to allow that kind of a procedure to go on, unresolved, as long as it has at a cost to the taxpayers where you could have built a community centre with the same amount of money and I think served the citizens in a better way. That is the reason for the shift to the legislation.

Mr. Mandel: I am not quarrelling with that. I am just quarrelling with the fact that we are at present there in front of the board. The cost that has been spent has been spent. We cannot do anything about that.

Mr. Elston: If I may make an observation, the other thing is the money that has been spent to this point has probably developed, as between the two parties, a relative position of advantage which has been hard fought for and has been won over

that time frame. What you are doing with this piece of legislation is wiping out whatever good has been won or lost over that last five years.

I am quite convinced that you cannot eliminate the competitive positions of the parties, particularly Barrie and Vespra. I am waiting to hear from Tiny as well. But when people have been involved that long and develop to this stage, I really cannot see how we can countenance a destruction of that total process at this point. That is just a personal comment, and I think we ought to think about those ends no matter what money has been spent. We have to think about the relative position of the two parties.

Mr. Rotenberg: Mr. Chairman, I wonder if I could ask Mr. Mandel if he would be good enough to supply me with my quote from Hansard so I could comment later? I did not research it as well as he did.

You have indicated, Mr. Mandel, that you are now before the OMB. Are you in the middle of your hearings with the OMB now?

Mr. Mandel: No. The Supreme Court of Canada has ruled. We have written to the OMB for directions. The OMB says it wants to know what the minister is doing, to put it bluntly.

Mr. Rotenberg: So when you say you are before the OMB, your status is you are now back to square one with an application by Barrie and you are waiting to be heard?

Mr. Mandel: No, no, no. We are continuing with an application that was made by Barrie. There is evidence that was before the OMB. The Supreme Court of Canada has made certain rulings and we now want to proceed in front of the OMB based on those rulings. We are not for a moment suggesting that we are starting over again.

Mr. Rotenberg: But you are not in the midst of hearings of the OMB at the present time?

Mr. Mandel: No. We cannot get before the OMB because the OMB wants to know what the minister is doing.

Mr. Rotenberg: So you have not even got a date before the OMB at this time?

Mr. Mandel: No, that is true. No one was suggesting we had a date before the OMB because the Supreme Court of Canada had to decide. It has decided; now we go back to the OMB.

Mr. Rotenberg: What specifically did the Supreme Court of Canada say with regard to Vespra, forgetting Innisfil?

Mr. Mandel: The Supreme Court of Canada did not decide anything in regard to Vespra. It decided that a certain thing the OMB did was wrong. It certified its opinion to the board saying, "What you did in regard to the letter from the minister of the

government was wrong."

Mr. Rotenberg: That was with the Barrie-Innisfil dispute?

Mr. Mandel: No, sir. That applied in regard to population projections which penetrates their decision. It affects what happened to Vespra and it affects what happened to other people as well.

Mr. Rotenberg: Are you prepared to go back to the OMB tomorrow if they are ready to go and have a fast hearing?

Mr. Mandel: We have asked. If you mean am I ready to actually step into tomorrow and conduct the proceedings, I would like a little time to prepare, but we have asked to go back, sir.

Mr. Rotenberg: Would you be starting in effect the case over again, or what would you be doing? You would be dealing with Barrie's application to annex a piece of Vespra. Would you in effect be starting the case over again?

Mr. Mandel: I don't know what the board's decision would be. It is certainly not our intention to start the case over again. What we have to do is take the Supreme Court of Canada's decision, see what evidence is ruled out and see what evidence still remains. That's a lengthy process in terms of determining just what the ramifications are. I don't know that I am prepared to deal with that. I will try my best. I haven't studied that problem. But let me say it this way, sir: That application is alive and well. The objection by Vespra is alive and well.

Mr. Rotenberg: If you go through the total OMB hearing, what result do you want to get? What are you asking the OMB to do? Are you asking that the application for annexation be turned down?

Mr. Mandel: We are opposing the application to annex portions of Vespra, yes.

Mr. Rotenberg: If you win at the Ontario Municipal Board and Barrie loses at the Ontario Municipal Board, is there anything to preclude Barrie the next day from applying for negotiation under the Municipal Boundary Negotiations Act?

Mr. Mandel: In view of the decision of the OMB?

Mr. Rotenberg: Yes.

Mr. Mandel: I would think that Barrie, having exercised its remedy, would still be under the old legislation.

Mr. Epp: And you could appeal it too.

Mr. Mandel: Oh, yes. I have all sorts of rights under the old legislation. If I lose, I can appeal.

Mr. Rotenberg: He is not going to appeal if he wins.

Mr. Mandel: If I lose, I might. If I win, of course I am not going to appeal. But if you are asking me for a legal decision as to what Vespra could do, it would be my respectful submission that Barrie is under the old legislation, and indeed Vespra is under the old legislation, which means it would have its right within 28 days of a decision to file an objection to the decision with the Lieutenant Governor in Council.

Mr. MacQuarrie: Do you mean to say that Barrie would be forever barred from seeking relief under the Municipal Boundary Negotiations Act or seeking some sort of relief?

Mr. Mandel: You are asking some highly technical legal questions and if you want off-the-cuff answers, I can do no better than that right now because I haven't considered that issue. I would think there's such a thing called abuse of process, and I would have to think about how that would apply in this situation; but certainly I would think prima facie there's an abusing of some process going on here, having gone the one route and lost, now trying to work it out another route. You are under that legislation. They have exhausted their rights under that legislation. Now as to whether they can then reapply under the new legislation, there may be two ways of handling that. One is through the courts and the other route is through the minister, saying, "Look, they had their try. What are you involved in it now for?"

Mr. MacQuarrie: Abuse of circumstance and municipal needs, their problems and the rest of it are really questions of circumstance that change almost from year to year.

Mr. Mandel: If there is a new circumstance, that's something else; but if it is the old circumstance and it has already been decided, I don't know why the minister would countenance someone who has already been decided under the same circumstances going under this new legislation.

Mr. MacQuarrie: Mr. Mandel, in your remarks you indicated that you felt the Municipal Boundary Negotiations Act was a good statute.

Mr. Mandel: I don't know whether I said it was a good statute. If I did, what I meant to say was I am not quarrelling with the merits of what the Municipal Boundary Negotiations Act is attempting to do. I am not quarrelling with that.

Mr. MacQuarrie: Will you agree that it's an improvement over the procedure under section 14, that many municipalities--

5:10 p.m.

Mr. Mandel: Not necessarily, sir, and I will tell you why. As I understand the Municipal Boundary Negotiations Act, it is an attempt to settle things, which is fine. I do not know how other lawyers operate; I know how some operate. If the Barrie thing could have been settled, it would have been settled. Vespra has tried to settle things with Barrie, and it did not work; so there is a dispute involved.

This is one way of resolving the dispute, but the old Municipal Act solves it another way. It remains to be seen whether this will be any more expeditious than the old Municipal Act. Time will tell. I appreciate the intention of what this is trying to accomplish: to cut down costs and to try to resolve the dispute in a more expeditious fashion. That is motherhood and I would endorse that.

Mr. MacQuarrie: You would endorse that?

Mr. Mandel: To the extent that it does it, I endorse it.

Mr. MacQuarrie: I have had some limited experience with annexations and arbitrarily imposed municipal restructuring, but some municipal commentators have classified actions under section 14 as predator and prey: the big municipality moving in on the small one and taking its commercial assessment and the rest of it.

You did question the uncertainty created by giving the annexer the right to withdraw up to the last minute. If everyone knew the annexer were going to withdraw, how could rights of either party be that greatly prejudiced?

Mr. Mandel: How do you know?

Mr. MacQuarrie: This is the thing. I am just wondering whether there is some way of tightening up the legislation to force an annexer to take a position immediately. That would remove this question of uncertainty which you say places you in jeopardy.

Mr. Mandel: That is one reason Vespra is placed in jeopardy. The other reason is it is unfair that one party is given this option to transfer to another--

Mr. MacQuarrie: Notwithstanding the fact the option is given, it is a question then of what harm is done to the annexe--I am using your terms here. He is then placed in the position of being one of the negotiating parties under the Municipal Boundary Negotiations Act. He may lose a strategic advantage before the Ontario Municipal Board, if he has one, but strategic advantages before the board can be changed from day to day.

I do not think the municipality is that greatly prejudiced by being thrown into the new process, except for the uncertainty you directed the committee's attention to. I thought you did it very tellingly. You never know up until the last minute, even up to the cabinet decision on appeal from the OMB, whether he is going to withdraw at that point and go the other route.

If we had some mechanism of forcing him to withdraw--if he does not withdraw, he has made his choice to go the OMB route. Some of these municipalities, as you heard from Midland, were cast into it in this period of uncertainty when there was talk of the Municipal Boundary Negotiations Act coming in. Section 14 was the only route available at the time. They took that route very uncertainly, wanting to get out and under the new regime as quickly as possible.

To me, the most telling point in your argument was the uncertainty the annexee is left in and whether the legislation can be tightened up to remove that element of uncertainty.

Mr. Mandel: First, I am sure your draftsmen can tighten it up. There is no magic in tightening it up. That does not resolve the problem for Vespra. It resolves one of the complaints.

Mr. MacQuarrie: I thought it was your major complaint.

Mr. Mandel: It is a major complaint, but that would be a complaint everybody has. It is my submission to this committee that Vespra is in a unique position. It is different from all the other cases that may be outstanding out there, because it has already undergone months and months of proceedings.

Mr. MacQuarrie: I realize that.

Mr. Mandel: With the greatest respect, I do not think you can dismiss tactical advantages that have been gained. They have been bought and paid for, and every inch has been fought for. They should not be taken away. If you look at a battle and the people fight for inches and inches, it should not be dismissed automatically.

Mr. MacQuarrie: Maybe I should not be saying this as a solicitor; however, I am thinking not so much of tactical advantage as what is right or wrong for the people in those communities and what is the best process to follow to get matters settled that will serve the best advantage of that community and the--

Mr. Elston: Vespra knows what is good for them. They have already opposed the previous bylaw. We have to take into consideration that they now feel they are better served by going through that other process. They do not want to see a unilateral move destroy everything they have worked to build. With respect, I cannot quite see that.

Mr. MacQuarrie: There are two sides to the story, though. The Municipal Boundary Negotiations Act was designed to be a lot more explicit and a lot more defined.

Mr. Elston: It puts you back to square one, and that is not where these people want to go.

Mr. MacQuarrie: If I understood some of the--

Mr. Elston: They already have evidence before the board right now.

Mr. MacQuarrie: They have evidence in, but whether the hearing starts from--

Mr. Mandel: I do not think we are back at square one at all. I never suggested we are back. Maybe Mr. Rotenberg did--

Mr. MacQuarrie: Maybe I misunderstood.

Mr. Elston: If I were having a difficult time doing a particular thing and I had taken some time, I would really like to get started over again and get my advantage as the instigator. I can see the points being raised here, and they are very serious ones. They do not have anything to do with the merit of it, but with they do with its tactics and with what has been done by the council up to this point in that municipality. We cannot dismiss it.

Mr. MacQuarrie: Basically, we should look at what we can do to relieve any real or imaginary harm that is done by changing from the municipal board to the new legislation. I think we all agree the new legislation does provide for a better process than the old section 14 proceedings. We should get the municipalities under the new regime, if we can.

Mr. Epp: Bob, there is an important principle, though. I agree with the Municipal Boundary Negotiations Act; I would never have any doubt about that. But the important principle here is that they have started under one act, they do not like what is happening and now they want retroactive legislation going back and saying to start again.

Mr. Rotenberg: With respect, that is not what retroactive legislation is.

Mr. Epp: Retroactive legislation--

Mr. Chairman: Gentlemen, you are into the merits and we can deal with them on the clause by clause. Do you have any other questions to address to these witnesses before we get to other witnesses?

Mr. MacQuarrie: The other question has already been asked by Mr. Rotenberg. That is: Assuming the OMB does its job and comes up with a position, can the municipality then proceed under this Municipal Boundary Negotiations Act?

Mr. Elston: I believe Mr. Rotenberg was going to reply with respect to his earlier statement.

Mr. Breaugh: He was going to say whether he was dealing with this year's intentions or last year's intentions.

Mr. Elston: Or whether we are dealing with this Ontario or another Ontario.

Mr. Breaugh: And why he totally abandoned his principles and introduced this bill.

5:20 p.m.

Mr. Rotenberg: I would be more than pleased to do it. I was going to do it later but, if the committee would like, I would be more than pleased to do it now.

Mr. Breaugh: Your honour is at stake. Let that be a warning.

Mr. Rotenberg: What I said on the date of this, when we discussed merits of the bill in December 1981--

Mr. Epp: Read it to us again.

Mr. Rotenberg: We are saying that those before the board, being dealt with by the board, will be under the old rules and not under the new rules, the rules of this act. The section of the Municipal Act will apply to those annexations. In other words, anything now in process before the board is under the old rules. That is what I said.

I did not say you have to stay at the board, because, with respect, Mr. Mandel threw that in as an editorial comment. Nothing in my remarks before the House said you have to stay there once you are before the board. I said you are under the old rules. There is nothing in the old rules--Bill 147 had never happened.

An applicant before the Ontario Municipal Board, as before a court, has the right to withdraw his application. He automatically loses, but he has the right to withdraw. Those are the old rules.

Mr. Epp: And stay.

Mr. Elston: Then he would not be able to instigate a new section 14 application either. Then you would have the argument about abuse of process.

With respect, what you are trying to say--

Mr. Rotenberg: With respect, can I finish? I did not interrupt you.

Mr. Elston: Okay. Go right ahead.

Mr. Rotenberg: Under the old rules, the municipality had the right to withdraw. We still interpret section 24 of the act to mean a municipality will be heard by the OMB if they are there.

Our interpretation of that is, and still is, that it does not preclude the municipality's right to withdraw. However, because there has been a court challenge by Tiny township to the interpretation of section 24 and because we have other municipalities that say, "Look, let's get on with the job," the ministry brought forward this bill to clarify the intention of Bill 147 and could still be legally interpreted as 147. There is always a right to withdraw.

I am responding with some of the things I feel I should as a point of privilege, as to whether I have changed my mind from a year ago. I would indicate I have not. If they are under the old rules, we just want them to have the rights they had under the old rules.

Mr. Chairman: Mr. Epp, are you going to deal with the

parliamentary assistant or the witnesses?

Mr. Epp: With the parliamentary assistant.

Mr. Chairman: Might we wait and you can have your time at him when all the witnesses have been heard and in the clause-by-clause?

Mr. Epp: I am your guest.

Mr. Breaugh: He may want to give a third version of it then.

Mr. Chairman: Messrs. Mandel and Beamen, thank you for your time.

From the township of Tiny, the solicitor, Mr. Conlin.

Mr. Conlin: I have with me Mr. Guy Maurice, who is the clerk-treasurer of the municipality.

I gave the submissions I propose to make to your clerk. I am hoping they have been distributed to you. I handed some 25 copies to him when I got here. It would make it a little easier for you to follow what I have to say. It is not my intention to read this whole treatise, but I would like to have it in front of you so I can highlight it as I go through it. That should expedite the proceedings.

If the committee is prepared to hear me at this moment, I do want to say at the outset that I subscribe entirely and completely to everything Mr. Mandel has made by way of submissions about what is wrong with the legislation in Bill 62 and why it should not be adopted in that form. What he says is applicable to Vespra is similarly applicable to any municipality that is a respondent to an application made prior to February 1, 1982. Section 24(1), which I have recited in my submission on page 1, says in the clearest possible language that if the application was made prior to that time, "the board shall hear and determine the subject matter of the application."

You will note in my first paragraph it is my respectful submission that we can get out of this miserable quandary here today if the committee will make the submitted amendment that I suggest would be appropriate. I point out at the outset that I would invite you to recommend to the House that before its adoption and enactment of Bill 62, there should be an amendment to it to require consent of the respondent municipalities.

As I say, Midland filed an application. The law surely is not different whether it be under the newer act or under the old act. Midland has to establish a need to enlarge its boundaries. In my respectful submission, as I point out in this submission, the request by Midland for an annexation was to interfere, not by virtue of a need to enlarge its boundaries but rather in the planning process which was under way in Tiny township.

I think Mr. Haig's submission is less than frank when he

says something about that commercial area that is in Tiny township. Tiny township's parcel of land, which they seek to annex is and has been zoned commercial without objection from Midland since at least as far back as 1976. It is so zoned, but official plan amendment 23, which has been in the course of an attempted processing, is an official plan applicable to the whole municipality, including in it commercial policies which would be somewhat more restrictive than the unlimited zoning which is paramount at the moment on that property.

That OPA was adopted and submitted to the minister for approval and at the behest of the municipalities adjacent to us. If you will pardon the expression, the minister has sat on it.

I am saying to you, as Mr. Mandel said, and I point out in paragraph 2, that under subsection 24(1) of the Municipal Boundary Negotiations Act adopted in 1980, made in force on February 1, 1982, when it was enacted, then and thereupon Tiny township became vested of a substantive right to require that the annexation application which was commenced by Midland be heard by the municipal board. That is what we want.

Tiny township desires to keep that vested, substantive right, but if you enact Bill 62, it would be to deprive the township of Tiny of that vested, substantive right and it would arm Midland to do it unilaterally and retroactively. It is Midland that would be given the power to deprive Tiny township of the vested right to have this matter disposed of at the municipal board. We submit to this committee and through it to the Legislature that no legislation should be enacted which has a retroactive effect upon a vested right.

Prior to the amendment of Bill 62, it is suggested and submitted that it should be amended as I have set out on page 3 of my submission to you. The underlying words are the words that I submit could resolve the difficulty by simply saying that the applicant municipality, after it has set out on that venture and having regard to the fact that the act says the board shall continue the hearing, if it wants to proceed the other way, may withdraw with the consent of the respondent municipality which has that right to be heard by the municipal board.

If it were amended in that way, it would certainly avoid the offensive nature of the legislation which imposes a retroactivity upon the nonconsenting municipality, the respondent, who stands there and is the one from whom the applicant seeks to take something, and who wants to keep the status quo.

5:30 p.m.

I have quoted, from the immediacy of Hansard, Mr. Rotenberg's statements which bring us here before your committee, and I do not intend to do other than say I got them from the Hansard immediacy of the next day. I quoted them, and they point out that we can have a hearing, no advertising; just get Tiny down here and make a presentation. We will hear them whenever we do get it back to the House.

All that did was to sort of impress me like the kind of movies I went to when I was a youngster in the 1930s. You went to a western movie and they said to the bad guy, "We're going to hear you during your trial before we hang you." We have been given a day to come down and be heard, but we have been told time and again that, if we do not get out of here by six o'clock, when there is to be a report back, "We cannot hear you any further, maybe even tonight."

However, having regard to the fact that Mr. Rotenberg did say, at least on two occasions when he agreed that we should be given an opportunity to be heard, that there are a number of other municipalities that need this bill in a hurry, I have set out, starting on page 4 through practically to the end of my submission, what we did to find out who they are.

There has been some suggestion that there are eight. We asked Mr. Isaac, who is the head of the directorate of the municipal boundaries secretariat, how many applications are outstanding that were filed prior to February 1, 1982, to which this section could apply. He recited the ones that I have there, down to and including seven. If there is an eighth one, it was overlooked in the communication which was certainly made to us by telephone.

I want you to take cognizance of the fact that the last two, namely, Midland-Tiny and Barrie-Vespra, are both here before you at least as it relates to the respondent municipalities saying, "Do not force us to accept the retroactive deprivation of the applicant municipality of that vested right which we have." Mr. Mandel has been very explicit and clear, and I adopt what he has to say as to why it should not happen.

What we did thereafter, as you will see at the bottom of page 4, is that Mr. Maurice, beside me, at my request communicated with the chief administrative officer of every one of the other ones that might possibly be affected to find out what is the status and what is the result. It is my respectful submission that with the possible exception of Midland, which without any reports and without having done anything to suggest a need to enlarge its boundaries, launched this application--and even then, I say without fear of contradiction, it was Mr. Haig who communicated to the municipal board the fact that a hearing date would not be called for immediately because neither side was ready. I do not think he invited my people to tell him whether they were ready or not, but in any event the board then and at the behest of the minister here has declined to give an appointment to date.

But as to Tweed-Hungerford, the proceedings under the new act have already been commenced as if the act was in force. The fact of the matter is that the act, where someone passed a bylaw, is clear in its language and it cannot be otherwise, that it was to continue before the municipal board but Hungerford and Tweed have begun. Presumably they can go on and, if my suggested amendment, with the consent of the respondent municipality, were to be adopted, there is no harm to them. They can keep on going and ex post facto, on the enactment of Bill 62 so amended, they would not be hurt.

Lancaster and Charlottenburgh have indicated an intent to consent to get on that route; Rockland and Clarence, an intent to get on with that route; as to Watford and Warwick, the applicant indicated a preference to go to the municipal board, but that option would be available to them under Bill 62 as you propound it, and would continue available to them under Bill 62 as I suggest it should be amended.

As to Erie Beach and Raleigh, that one, with respect, has simply evaporated. Erie Beach indicated it was making the application for annexation at the behest of a developer which wanted to get on with the development on the fringes of Erie Beach, but in Raleigh township.

They went to Erie Beach and asked that they annex it. Erie Beach did. Economic conditions have overtaken the circumstance. There is no developer. There is no longer any developer interested in getting on with it. There is no project being carried out or, so far as we are aware, to be carried out, and to all intents and purposes that one would seem to have evaporated.

The canvass of the municipalities has revealed, at least so far as we can ascertain from the information given by the ministry and our inquiry of each of them in turn, that there is certainly not a large number of municipalities that need this bill in a hurry in the form in which it is propounded in Bill 62. If it were amended, and thereafter enacted as we proposed earlier in my submission, those municipalities that desired to get on with the negotiation could immediately do so.

It is respectfully submitted to this committee that the legislation, under which the town of Midland may solely and in its discretion, and retroactively, deprive the township of Tiny of the vested substantive right to a hearing before the board which it now has, ought not to be enacted.

Since all the other municipalities for the benefit of which the members of the government have expressed some concern to have the legislation enacted are apparently content to consent, at least as far as our inquiries can establish it, then it ought not to be enacted in its present form, being pointedly applicable only to the nonconsenting municipalities of Tiny and Vespra.

Now you say, "Why does Tiny want the amendment?" With the utmost of respect, Tiny has a real and reasonable apprehension of bias being exercised in favour of Midland in any negotiations, the procedures of which would have to be followed if we went under that bill. This apprehension has been fuelled by a series of decisions which have been taken by the minister to date in respect of the processing of Tiny's planning and the processing of its official plan amendment 23.

OPA 23 was adopted by Tiny township, is applicable to its entire municipality and it was sent to the minister in the normal course for his approval on March 27, 1979. Objections by Midland and Penetanguishene to some of the commercial policies: I say they are more restrictive in this official plan than are the existing

zoning permitted on the site and which has been extant for some considerable number of years, without objection to that last bylaw by Midland.

The minister has refused Tiny's request to approve the noncontentious portions of OPA 23 and to refer the commercial policies to the Ontario Municipal Board for its resolution as called for under the Planning Act extant. Presumably, this was awaiting the enactment of the Municipal Boundary Negotiations Act whereby he could require us to carry on negotiations, with his body being the one that has the ultimate decision-making power.

The act gave my client a clear, vested right to an OMB hearing on the application by Midland being filed, and now the minister, who will be the ultimate decision-maker--and I agree with Mr. Mandel's submission that it is the minister who is the ultimate decision-maker under this statute; if you read section 13, to which Mr. Rotenberg has referred, the minister may refer any issue to the municipal board to hear any party municipality, but after that hearing and report back to him by the municipal board, he makes the decision.

5:40 p.m.

Consequently there is a reasoned and real apprehension of bias and, with the greatest of respect, we believe that the minister ought not to be sponsoring a bill which has this retroactive power given to Midland, which is entirely in its discretion to come before the ministry on the negotiation process, since, in our respectful submission, the amendment I suggest, and having regard to the inquiries that have been made, those who are the only people who can be heard or to be affected by it.

Anybody who starts now is under the new act. Only those applications filed prior to February 1, 1972, are affected by this new Bill 62. In my respectful submission, the two most affected are my client, Tiny, and Vespra, which is adequately and properly looked after by Mr. Mandel. I submit that the amendment ought to be reported as a requisite to enactment of Bill 62, to require the consent of the respondent municipality if the applicant wants to go the negotiation route, having started before the board.

I do not know if there is anything more that I can usefully urge you. I am here to respond as best I can on behalf of my client, and I have here with me practically my entire council and clerk-administrator, who may be able to express their concerns directly if it is of any concern of you to ask.

Mr. Chairman: Thank you very much, Mr. Conlin. Before opening the questioning, I might mentioned that Mr. Warman, one of the aldermen from Barrie, is here. While he was not prepared and was not intending to go ahead, under the circumstances and perhaps as the fourth witness, he will have a word or two to simply give Barrie's position. I just mention that to you.

Mr. MacQuarrie: I have one question of Mr. Conlin. With the amendment you propose, the introduction to section 24(3) with the words "with the consent of the respondent municipality," would

the township of Tiny be prepared to readily consent to withdrawal of the application that is currently before the Ontario Municipal Board?

Mr. Conlin: Not according to the instructions I have at the moment. I am respectfully submitting to you through the chair, Mr. McQuarrie, if that is the attitude, then it enhances the concern of bias that we have, namely, that we are being forced to go via the new route when the statute clearly gave us a vested right to go the other way.

Mr. MacQuarrie: In effect we are at a sort of Mexican standoff here. I think there is a desire implicit in the new legislation, the amending bill, that all municipalities in the province, regardless of where proceedings are, at the stage of present proceeding should have the full advantage of the improved process provided by the Municipal Boundary Negotiations Act. If we simply insert, by way of amendment, consent of a party who indicates he is not going to consent, it does not make very much sense to the legislation at all.

Mr. Conlin: With respect, sir, the quote "improved process" is in the eye of the beholder. It is, as I said, one where there is a reasoned, reasonable and real apprehension of bias that the negotiation process will not be a fair process as perceived by my client, Tiny township. It therefore wants to do nothing more than to continue to enjoy the right that it currently enjoys under the legislation, the Municipal Boundary Negotiations Act as it exists.

Mr. MacQuarrie: I take it then that you would not concede that the Municipal Boundary Negotiations Act is a substantial improvement over the process that is currently provided in section 14.

Mr. Conlin: I do not know whether it is or whether it is not. Mr. Mandel was quite correct that it is going to have to stand the test of a considerable number of litigious proceedings before one can find out whether it is or whether it is not. It opens innumerable questions. It may be and it may not. Certainly in the perception of my client it is not one they embrace with open arms.

Since there are only seven that are concerned with it, and since five of them, so far as we can find out, are prepared to make the consent situation, we are talking about two municipalities asking to be permitted to continue under the law as it exists today.

Mr. MacQuarrie: I gathered that. But I also felt, in support of the main legislation, and certainly judging from the remarks made in the House at the time that the legislation was brought forth and the very strong support that was received, that it seemed to be the feeling of the Legislature that there was a tremendous improvement over the process given by section 14.

Mr. Conlin: Mr. MacQuarrie, don't misunderstand me. I am not attacking the main legislation. I am supporting it. I am

asking that I be left with the rights it gave me. As it relates to the future processes, which are ongoing and not retroactive, then by all means--

Mr. MacQuarrie: All the new legislation is trying to do is to give your client the benefit of that--

Mr. Conlin: No, no. It is trying to--

Mr. MacQuarrie: If Midland so desires.

Mr. Conlin: No. It is giving Midland the right to take away from the right that I currently enjoy under that act.

Mr. MacQuarrie: No. If Midland seeks relief under the new process, rights then automatically flow to Tiny.

Mr. Conlin: But they have rights now that they would be deprived of.

Mr. Chairman: It is a question of countervailing rights.

Mr. Brandt: It is a new package of rights.

Mr. Breaugh: Mr. Conlin, on a couple of occasions you mentioned that you felt there was some bias being shown. Can I ask you to amplify that just slightly? Who is being biased to whom?

Mr. Conlin: As we perceive it--as I am instructed and as we have examined the history--the application for annexation is not for an annexation but rather to frustrate the zoning and the development within the zoning of lands in our municipality.

The minister has declined to follow the normal procedure of referral under the Planning Act of the contentious issue--that is, contentious in the planning context between Tiny and Midland--to the municipal board for its resolution, has seen fit to withhold and to pass this act, or at least to shepherd it through the House and have it passed by the Legislature, with which act we are content because it affords us the right to challenge or to meet the challenge for annexation in the municipal board, but is still withheld from us the reference of the contentious issues in the Planning Act.

Since that is being done by the Minister of Municipality and Housing wearing his planning hat at the same time as he will be the guy who puts on his negotiation hat, we perceive it as being one that is a manifestation of some bias against our municipality. We would prefer to have the matter resolved, as to the annexation and as to the planning issue, in the municipal board. To that end, in fact, a divisional court proceeding has been commenced and perfected against the minister, to be argued in the fall, requiring his reference to the board of the planning issue. That is to be argued.

5:50 p.m.

Mr. Brandt: A question to the parliamentary assistant:

Mr. Rotenberg, I do not know whether you heard the response with respect to the delays in some of the planning matters, but in your experience would that be an unusual circumstance, given that there are these other complicating matters that are being dealt with now that are unresolved between the municipalities, that there are certain planning actions relating to the official plan in Tiny that they want to proceed with, but that the minister, given that he does have this joint role, or this joint responsibility, is holding back one, arbitrarily awaiting the outcome of a more global solution to the problem? Is that unusual for a minister to do that?

It is being interpreted by Tiny as being a reflection of the minister's bias as to the outcome of the municipal structure in that area. I am wondering whether it has been done before. I can think of some circumstances where similar things have come up. Perhaps you would want to comment on it.

Mr. Rotenberg: First of all, I totally reject any charge of bias on behalf of the minister or the ministry. It is quite normal, when there is a matter under dispute or several matters under dispute in the same area, such as an annexation and an official plan amendment covering the same territory, that all decisions are made at the same time and that one decision does not go forward before the other, either the OP before the annexation, or the annexation before the official plan amendment.

I am not saying it is always done, but it is a situation that happens quite often. If you have the official plan amendment decided in favour of Tiny township before the annexation was dealt with, say, someone could say that was a bias and a prejudice against Midland. Someone could say that; I am not saying it would be said.

The position of the ministry has been simply that with the annexation application before us, we ask the Ontario Municipal Board in effect--if it went to OMB--to deal with the annexation and the OP at the same time. If the--

Interjection.

Mr. Rotenberg: No. The planning issues would come up at the OP hearing. Just one minute: let me get this exactly right. Actually, I believe the official plan would not be dealt with until the annexation matter had been dealt with, which is somewhat normal now.

If--capitalize that "if"--Midland withdrew their applications for annexation--which, as I have indicated, means Tiny wins that round--and nothing else happens, of course the minister would deal with the official plan amendment. If Midland were allowed to withdraw the application and then applied for negotiation of the boundary disputes, then the planning matters would be dealt with in those negotiations, which is also a normal situation.

That is my interpretation of what has happened and what would happen. As you are all aware, in the Brantford situation

that is what happened. The planning matters were dealt with at the same time as part of the boundary negotiations.

It is the philosophy of Bill 147 that all outstanding issues, not just boundary issues, between two adjacent municipalities should be dealt with under the negotiating process. If we go to the negotiating process, then all the matters would be before the negotiators--the boundaries, the annexations, the official plan amendments, zoning--all that would be before the negotiations, which is the philosophy of the bill and is what has happened before.

I hope that answers your question. Whatever process the minister is taking is a decision on process and is not in any way indicating the ministry's feeling about a final solution.

Mr. Breaugh: Have you, Mr. Conlin, ever been given an explanation as to why the minister intended to proceed with the most unusual step of a bill of this nature, which runs contrary to the original legislation and the government's stated intent less than a year ago, and secondly, intended to do so without any public hearing at all or any opportunity for your clients to appear before committee?

It is clear in a letter dated June 1, 1982, from Mr. Lord, who is a partner, I believe, in your law firm. I will just quote one sentence, "We have since been advised by Mr. Rotenberg that the government intends to proceed with Bill 62 tonight without referral to committee."

Have you ever been given an explanation by anybody as to why they would bring forward legislation to deal specifically with two townships--in particular with your Tiny township--that they would do so flying in the face of legislation they proposed less than a year ago, and that they had at one time intended to do that without even having a hearing? How is it that you have incurred the wrath of this minister?

Mr. Conlin: The answer to the question cannot be given in a categorical yes or no. We have been given the response. It has been given by Mr. Rotenberg in the House and again here today, that that is what we intended and that is what we are seeking to do; therefore, we do not believe it necessary to send it to a committee. That is in correspondence to that same partner, Mr. Lord.

I do not care what they intended. Mr. Mandel has indicated by reading from Hansard what they said. What the Legislature said in the legislation is explicit and does what I have submitted. The Bill 62 amendment, whether it is an attempt to extricate Midland and/or Barrie from the position in which they find themselves, is sheer speculation on my part but it is what is being done.

It came to pass immediately after Midland enacted a bylaw which was drafted in the most ridiculous terms in the legislative chambers and sent to all the municipalities as a draft of bylaw that they could rely on and enact pursuant to statute, and it was enacted by Midland on February 8, 1982, one week following the

proclamation of this statute.

On behalf of Tiny township and on its instructions, we challenged that bylaw as being beyond the competence of the statute and they quickly repealed it. I guess their advice must be that is what the statute says and you have done the wrong thing.

Vespra did exactly the same thing. When their bylaw was challenged, they repealed it. Almost immediately thereafter, Bill 62 was introduced. We say that Bill 62 deprives us of the rights that we have. Why? It is said to us that it is not what we intended; but one of the principles in my law firm when I started over 30 years ago used to be, when you go to court and you take some legislation down there it is not what they intended to say, it is what they did say that counts. What they said was: "Vespra and Tiny townships and other respondent municipalities had a vested right to have the OMB, an independent body, decide whether there should be annexation or not." That is what we want.

If this enactment of Bill 62 goes through in the form in which it is reported to you and requested to be reported back, it gives the right to Midland and to Barrie and to the other applicant municipalities to take that right away from us after the fact. That is the retroactivity of it, and it takes it away from us by action of Midland enacting a bylaw of withdrawal.

Although Mr. Rotenberg can shake his head and say, "No, no," that is exactly what happens. Mr. Mandel is correct when he says a right to withdraw from a proceeding is not without penalty. You can enact a bylaw to withdraw from an application under the old rules, the rules that you started on; but in my respectful submission, like every other protagonist, you are not entitled to then immediately turn around and take a second bite of the cherry by coming by a different route.

That is what we object to. We respectfully ask that it not be unilateral in the applicant municipality but be required to be fair to both. If five of them, for whom there has been an expression by Mr. Rotenberg of their concern to have it enacted, want to consent to go that route, then they could do so following the amendment I suggested and we would leave it to be resolved by the Ontario Municipal Board as it relates to those who are not prepared to consent at this stage.

6 p.m.

Mr. Breaugh: One final question to the parliamentary assistant: It appears to me that a compromise has been suggested; are you prepared to accept it?

Mr. Rotenberg: I heard no suggestion of compromise, Mr. Chairman.

Mr. Breaugh: So you remain vehement to the end?

Mr. Rotenberg: No, both you and Mr. Conlin are putting words into our mouth. I remain with the position that the present law is not being changed, it is being clarified. There is no

question that there always was a right to withdraw and the way Bill 147 is written it has been argued there still is a right to withdraw. That has been challenged and we want to clarify the law so that certain municipalities cannot use this action for delaying purposes.

Mr. Chairman: Thank you. That is something we can deal with later between the members.

Mr. Brandt: What time are we going on to?

Mr. Chairman: A few minutes after six and then we break until nine o'clock because the critics, Messrs. Epp, Breaugh and Rotenberg, have to be in the House on a municipal bill.

Mr. Breaugh: This is a disastrous proposal.

Mr. Chairman: I have no idea what it is. I am sure it is good legislation. Anyway, that would take from eight until nine.

Mr. Epp: I have a question.

Mr. Chairman: Fine. Mr. Brandt, would you carry on?

Mr. Brandt: Mine is a question as well.

Mr. Epp: Be my guest.

Mr. Brandt: I was going to ask the parliamentary assistant, if in fact Bill 62 is not passed by this committee and by the House--

Mr. Chairman: Excuse me, Mr. Brandt, can we not leave the questions to the parliamentary assistant until after nine o'clock and deal only with the witnesses now?

Mr. Brandt: I have a number of questions related both to the parliamentary assistant and to the people who are making the presentations. I find myself in a very difficult position trying to get the thread that I want to get out without addressing them to both parties, so I will give the floor back to Mr. Epp and let him proceed.

Mr. Chairman: How many minutes are you contemplating for your questions?

Mr. Brandt: I have a page full of them here.

Mr. Breaugh: A pail full or a page full?

Mr. Brandt: Both.

Mr. Chairman: I better ask the committee, what are your wishes? Excuse me one second to see whether the House has given us authority. We do have authority to adjourn and then to reconvene later this evening. What are the wishes of the committee so far as carrying on for a few minutes or breaking now until nine o'clock.

Mr. Swart: If the witnesses are prepared, I suggest we could break now until nine o'clock.

Mr. Epp: Let us finish with these witnesses anyway.

Mr. Chairman: If the witnesses are going to be here until 7:30 that is one thing. Mr. Brandt?

Mr. Brandt: I can address one question to them now. In regard to your concern about the minister and the new legislation, you seem to have certain apprehensions about the minister having the ultimate decision-making authority with respect to what happens in the outcome of a dispute between municipalities. I would suggest to you--and I have a question I am going to follow up with--that the very problem with the Ontario Municipal Board procedure now is that it can be delayed, there is a great deal of cost involved with that procedure, and the reason for going to the new process is quite obviously to avoid that.

As a catch-all at the bottom of this whole exercise, the minister does have the right to make a decision. I wonder what you see wrong with that? Since it is a political decision it is going to be negotiated by politicians rather than by lawyers, planners and consultants, who have proven to be totally inadequate in this whole exercise, with due respect. They have cost millions of dollars to municipalities in the procedure that has been followed in Barrie.

What the legislation that is now before us is trying to do is to bring municipalities that were in the process of the old and perhaps unworkable process into the new process, and you are taking issue with that on the basis that the minister should not have the final decision. Yet he is the one who has to take the political heat for a wrong decision, and he is the one who has to stand up and justify the decision that he ultimately makes. What do find wrong with that process?

Mr. Conlin: I do not concede the point you have put, that the minister has to take the heat for a decision made by the Ontario Municipal Board pursuant to the statute in the form in which it was enacted. It is the OMB that makes the decision. It is not something that has been frequently put before the minister to resolve after an annexation hearing before the board. Let us forget Barrie for the moment and just take an annexation proceeding before the board under section 14 of the act, which this statute suggests is that to which we are entitled as Midland.

An annexation proceeding and a disposition of that by the board is a final decision, unless your Bill 62 comes along and makes the unhappy applicant withdraw. It is a final decision, save in this respect: Objection can be lodged with the Lieutenant Governor in Council, but it is not an objection of the character that can be brought from a normal OMB hearing on a plan. Section 94 of the Ontario Municipal Board Act does not apply to make an automatic appeal to cabinet of a decision made by it in an annexation proceeding.

The objection can only be filed provided it is signed

personally by at least 10 per cent of the ratepayers entitled to vote on a money bylaw within the municipality which was the applicant or within the area which has been the subject matter of the application. Consequently, if Midland was to fail on this application before the OMB, it could not come by way of appeal to the cabinet from that disposition by the board, save by having at least 10 per cent of ratepayers in Midland who are entitled to vote on a money bylaw file the appeal to the Lieutenant Governor.

Conversely, if an order was made to annex a parcel of land to Midland or to any other annexing application, an objection under section 14 can only be filed if it signed by 10 per cent of the ratepayers within the area affected by that order who are entitled to vote on a money bylaw, with a final caveat that if there are no such ratepayers within the area covered by that order of the board, then the objection can be lodged by resolution of the council of the respondent municipality.

The cabinet or Lieutenant Governor's powers to deal with that objection are limited either to confirming the board's order or sending it back for a new hearing. It is not something which, under the legislation as it exists today, is ultimately decided by the minister and we are suggesting it ought not to be made retroactively applicable to those very applications which are recited in it, those filed prior to February 1, 1972.

In so far as the intermingling of planning and annexation matters before the OMB in the past, it is my respectful submission that this has not happened, and that the board exercises the power under the Municipal Act, under section 14 as it relates to dealing with an annexation application, or it exercises a power under what was formerly section 35 or 17 of the Planning Act and is now section 39 or 17 of the Planning Act in planning issues which come to it under section 35 or 39 by direct route under the legislation as it relates to bylaws, or under section 17 by reference to it by the minister.

It is that which the minister has declined to do so far. It is only under this act as it relates to any application to which this act applies, and that does not relate to a Midland application filed in March 1981. It is only under this act and to applications made under this act that an intermingling of the planning and the boundary dispute issue is brought into the same negotiation procedure.

6:10 p.m.

In so far as Brantford is concerned, that was a special case of an example that was created as a test case and carried out, and it is not resolved even yet. It did have to get referred, after negotiations, to a fact-finding by the OMB and it has not been resolved even yet on the matter of who pays whom for what, when.

Mr. Brandt: Your basic argument is that if there is a withdrawal on the part of one municipality which has made the application for an OMB hearing, you will lose the rights you have under the existing legislation. But would you not concede that you get a whole new basket of rights under the new Municipal Boundary

Negotiations Act, which in fact puts a new principle into play that may well be more effective than an antiquated piece of legislation that has proven to be a failure time and time again, I think the most classic example being Barrie?

Is it your wish that you get bound up into the same kind of problem that Barrie and the area around Simcoe county got bound up in, where there is an almost endless amount of cost and time delays? That is almost the sort of thing you are suggesting that you be led into if section 62 is not passed, because then you are on the route to the OMB and there is no moving from that path.

Mr. Conlin: Mr. Brandt, with the greatest of respect, you perceive every one of them to be of the character of the Barrie annexation application, and you cannot couch them all in that frame. I can only say that as I am instructed, and I am an advocate instructed by my client, they prefer the devil they know to the devil they do not. As it relates to the Barrie situation, if the minister, or a minister extant, had not seen fit to write a letter and have it delivered to the Ontario Municipal Board the litigation that arose and caused all that lengthy delay would not have occurred. All I am saying is, we want to be left under the legislation as it exists and we will not have all that harassment.

You perceive, and I can appreciate that I am being spoken to by a convert, as to this being the panacea of an annexation application for boundary dispute issues. I am not quarrelling with whether that is the case or not the case in the future. I am simply saying, let it stand and stand the test of whether it is good or bad into the future as it relates to applications that it covers, not those that it does not.

Mr. Brandt: I would suggest to you that representatives from the Association of Counties and Regions of Ontario, the Rural Ontario Municipal Association and the Association of Municipalities of Ontario all came together and made the determination that the old legislation--namely, the process of going to the OMB--was unworkable. Those are both urban and rural municipalities. They came to a consensus and came to the ministry and requested some changes as a result of all that.

You cited the case that perhaps Barrie is a bad example. I can give you numerous examples in Ontario where the OMB process has failed miserably. In my own opinion, and it may be just that, you would be doing a disservice to the taxpayers of your area by not going to the new process, having looked at the track record of the OMB process and recognizing that in areas like it--I will give you another name to check on, the Chatham area--that it has failed miserably to resolve boundary disputes.

Mr. Elston: With respect, Mr. Chairman, I think Mr. Brandt is lecturing not only the council but also the chief administrative officer of the municipality about something they have already made a decision on. They have made a conscious decision to follow this, and I do not think they need a lecture.

Mr. Brandt: I was not intending it to be a lecture, but I was intending to make the point--

Mr. Swart: But is not your prime concern, or one of your prime concerns, the fact that on the one side there are two options now open to a municipality, to the applicant, and on the other side there would be only one option open? Is that not your real concern? It is not a question of the benefit of one route versus the benefit of the other route--I think we are all in agreement on that--but the fact that one side has two routes it can go now if this passes, but the other side has no option. Is not that your prime concern, rather than any difference between the value of either route?

Mr. Conlin: If Midland were to just continue before the municipal board, you could do exactly what Mr. Mandel said, if it ended up with an adverse decision: withdraw before final disposition of the proceedings and start over again.

Mr. Mitchell: Mr. Chairman, on a procedural point: Have you ascertained who is going to be here this evening? I know the chairman had begun on that route but, recognizing the clock and that there are commitments for members at seven o'clock, I think that decision should be made and perhaps this is the appropriate time to adjourn.

The Vice-Chairman: The chairman had suggested that we were going to deal with the witnesses currently making the presentations and that Mr. Warman, an alderman from the city of Barrie, had a short presentation to make. We wanted to try to get rid of that. I hope that we do not get argumentative and I ask you just to keep your questions as narrowly confined as possible and we can speed this thing up, I hope.

Mr. Swart: Further to the procedure proposed, can we ascertain whether the witnesses can be here at nine o'clock? There may be a number of these to carry on. Are they prepared to be back at nine?

Mr. Conlin: Mr. Chairman, if you are asking that question of me, I will go and clear my desk. I did have other things that I was prepared to do but, if I am required to be here, I will be here.

The Vice-Chairman: I was rather hoping that we could conclude with you, Mr. Conlin.

Mr. Epp: I will be short, Mr. Chairman. I just want to get clarification. At about five minutes to six, Mr. Rotenberg was making some comments about the Ontario Municipal Board and about procedures, official plans, etc. Mr. Conlin, at that time I saw you shaking your head in the negative while he was very vigorously expounding on some procedures. I am not quite sure whether you covered all those procedures when Mr. Brandt asked you those questions. You wanted to have an opportunity of clarifying it, and I am just trying to give you that opportunity since you did not have it earlier. Do you recall?

Mr. Conlin: I think so. Frankly, what I was doing was disagreeing with what Mr. Rotenberg was propounding as being past

procedure under section 14 of the act as intermingling planning issues and annexation issues in the same area. I have practised law for more than 30 years and in such experience as I have had in dealing with this kind of an issue and in reading cases that I was not precisely involved in, I do not know of any such case in which the two issues under section 14 were intermingled.

It is undoubtedly true that this act, from the date it came into force, affords the right of having them all put into the negotiation procedure, and I concede what Mr. Rotenberg says, that this is perceived as a future desirable result. I am simply saying that, as it stands, we are still under section 14 until you hang me at the end of the trial.

Mr. Epp: Do not be sure you will be hung. There may be some people here who feel that way; I am sure it is not all of us.

Mr. Brandt: Some of us are quite pragmatic.

Mr. Epp: I always thought you were.

6:20 p.m.

Mr. Rotenberg: One question, Mr. Conlin; there seems to be a difference of opinion. In the absence of Bill 147, if it had not been enacted, would Midland now have the right to withdraw its application now before the Ontario Municipal Board?

Mr. Conlin: Yes. But if they started all over again right there under section 14, they would get thrown right out on their ear at the municipal board. That is precisely what happens in every tribunal, and that is precisely what is happening as it relates to the Interpretation Act which my friend referred to. The Interpretation Act is applicable particularly to courts and the procedures before tribunals of that kind. You can withdraw. You can withdraw even after you have lost and gone to appeal. You can withdraw before the appeal is carried, but the penalty is that that's the end of it: you lose; you cannot start over again.

The Vice-Chairman: Here again I think there might be some question as to that, depending on the circumstances.

That concludes with these witnesses. Would the committee take a few moments to hear Mr. Warman?

Mr. Conlin: If I am not required and my client permits my departure, I have other things I would like to attend to tonight.

The Vice-Chairman: Does the committee have any more need of Mr. Conlin or any of the other witnesses who were here, in case they have other things to do? They are always welcome to attend, of course.

Mr. Epp: I do not have any questions but sometimes when you go through the clause by clause there is a benefit that may accrue to us by having them here; I am not sure. I do not want to require him to be here; it is up to the township to say whether he

should or should not be here.

Mr. Mitchell: The township clerk will be here, I presume.

The Vice-Chairman: Perhaps we could call Mr. Warman.

Mr. Epp: I would just like to ask the witness, after he identifies himself, whether he is speaking on behalf of himself or on behalf of the city of Barrie.

Alderman R. W. Warman: Mr. Chairman and members of the committee, my first two statements will be on behalf of the city of Barrie, and the remainder will be on my own.

I must first apologize for my appearance; I came as a junior alderman to sit in the back row and listen to the proceedings, but as I heard them go on I felt that something should be said at least on my behalf and on behalf of my part in the city of Barrie.

The stand of the council of the city of Barrie is that we support the bill. I have been authorized to give that to you. I am sure we do not want to be excluded by a specific section that might be added to that bill if it were passed in its present recommended state.

For my own opinions, I certainly agree with Mr. Haig from Midland on the opinions he had. As you know, I am not a lawyer, and I have been preceded by three lawyers; so you are going to have to settle for a politician's side of the story.

Our initial applications did include annexation of portions of three townships, Oro, Innisfil and Vespra. The Oro one, as indicated earlier, has been dropped; we see no need to extend into that area.

The Innisfil one, which started approximately 10 years ago, spent about eight or nine years in the OMB with the hearings going on and on. It is estimated that somewhere between \$500,000 and \$1 million of the taxpayers' money has been spent to try to settle that dispute.

The case that went before the Supreme Court of Canada was to get a ruling on whether we could cross-examine the minister as a result of introducing his letter into the OMB hearing. However, at the same time that was in the Supreme Court of Canada, the mayor and the reeve of Innisfil got together at that time and said: "There must be a better way. Why don't we try the Brantford route? Why don't we get a mediator?"

That was consented to, and immediately following the last election, at which time I was elected, I became usually an observer, but certainly a part of the caucus where decisions were made at any of the annexation meetings between Innisfil township and the city of Barrie. I missed only about two of those meetings over a period of almost a year, and each time we got together I can speak favourably for that process. It did work.

Prior to that time, nothing was happening, nothing but

arguments. The Ontario Municipal Board hearings dragged on and on. They provided a place for students to go and visit and watch the procedures of government. When the mediation finally took place, we formed two committees of each council, Innisfil, of course, with the reeve in charge of that committee and all the members, ours with the mayor and four members, making five on each side. Bryan Isaac was the mediator.

We were able to meet, and we made sure we had a majority of council there on our side, because there were only five, and there are thirteen of us. So there was always more than seven present to make sure that any decision made in caucus would not be changed when we got back into a council meeting. The give and take that took place at that time, and the ability of Bryan to go between the two groups--and with a sawoff here and a sawoff there we were able to give and take--brought that to fruition. The end result was that annexation was solved very quickly, compared to the time that had been dragged through in the other procedures.

As for Vespra, as I understood the interpretation of it, it was banking on the ruling of the Supreme Court to enter back into the OMB ball field. We haven't had a ruling on that as to whether we can or not. The reason, as I understood it, that the implementation of the OMB ruling was held up in the first place was a very light interpretation of a portion of the boundary. We could not come to a consensus on where that boundary should go. We asked for a cabinet ruling on it, and to date we have not received that ruling out of cabinet either.

At the same time, we offered Vespra the negotiation steps. Their people came back and said they would like to negotiate, but they put restrictions on us. The same committee structure as I identified for Innisfil was there, but only the chairman could speak. This made it very hard for the two groups getting together when only the two chairmen talked to each other. The other four sat there like bumps on a log and were not allowed to say anything during the negotiations.

They also refused to have a mediator, because for some reason they were very suspicious of mediators and thought that was not a good way to go. I don't know where they got that. We tried to impress upon them that a mediator does help because that person is able to go between one and the other. We had two or three meetings, then finally our council said, "All the members of the committee can talk and we will get a mediator or we do not have any more meetings." That is the stage that was at.

When we passed the bylaw that was mentioned earlier and it was challenged in the court, it was withdrawn. One of the main reasons it was withdrawn was we did not want to incur any more expenditures of the taxpayers' money to find out if it was legal or not, when we felt there would be some interpretation given to us by the provincial government. I do not have anything else to add. I have been on both sides, I have seen both sides work. You are getting my interpretation of it.

Mr. Swart: Just one question, which you might expect: Do you not think there is something a little bit unfair about this

period of time when one side has the option of choosing two routes? We recognize that before December 18 there was only one route they could go. After the ones who had submitted their applications were finished, there was still only one route to go. At the present time, in this transition period, if Bill 62 passes it will mean there is an option open. One side can then choose whichever route it thinks is to its best advantage. The other side cannot. Don't you think there is something a bit unfair about that?

Mr. Warman: My personal opinion is no, based in the fact that we have frozen development outside the city in a particular area of Vespra township. There is no development allowed, only by consent. Both parties and the provincial government were no closer to solving the problem. We are continuing to expend taxpayers' money, and the solution I see is to let the bill go through as it is. In my personal opinion, no.

6:30 p.m.

Mr. Swart: I presume it is unlikely that the rural municipality will agree through negotiations only to the annexation. If it does not, are you not then very likely to be back in the same situation again, back with the Ontario Municipal Board? You might have to start all over again.

Mr. Warman: That is an outside possibility. I also saw the Innisfil negotiations drag on prior to my time on council for eight or nine years and then saw them resolved through mediation. We had far greater problems to the south than to the north, as I see them. It came off. There was give and take. Neither one of us was happy with what we got, but there was give and take on each side, we came to an agreement and it was signed.

Mr. Swart: Recognizing that the township now is so vehemently opposed to it, do you think it is likely it will enter into negotiations? Why wouldn't it consent now to it? It is costing its ratepayers a lot of money.

Mr. Warman: I really do not have an answer for you as to whether it will or not. We will have to leave that to the township. I hope it will.

Mr. Swart: In fact, by letting this bill go through, we could lengthen the whole process further and, after a long period of negotiation, etc., have it end up back again with the Ontario Municipal Board. That is a possibility.

Mr. Epp: That would be my comment, Mr. Chairman. You are going to drag them kicking and screaming through this legislation to the bargaining table when, if you and the minister's representatives here were to agree on the amendment Tiny township has recommended, you might be able to sit down and negotiate, so that both consent to withdraw the application from the OMB and go the other route. I have no problem with that. But the government is going to force them to go to the bargaining table, and they are obviously not going to agree and say, "Well, you fellows won and now we are going to agree to everything you want." Then you are going to end up with the OMB and extend the process.

Mr. Warman: I can only answer by saying I have seen the process work. I have faith in it. I think it will work again.

Mr. Epp: How has it worked? You have not sat down and agreed. How can you tell us it is going to work after you drag them kicking and screaming through the legislation to get Bill 62 passed when you have not been able to do it before that? I want to be fair with you, but there is nothing before the committee to indicate that you are going to, all of a sudden, get them co-operating now. I am not saying it is their fault or your fault. I am just saying they will not agree.

Mr. Warman: The reason I feel it has not worked to date is that it has not been given a fair chance. We have not tried that procedure.

Mr. Epp: But they could have gone that route and they never agreed. That is the point.

The Vice-Chairman: Let us try to conclude this as quickly as possible. Mr. Epp, if you are finished, Mr. Brandt.

Mr. Brandt: You indicated you have faith in the new procedure and I can well appreciate why you would have, looking at the problems you have had with the old procedure. But is it not a fact that the urban municipality is placed in the position that it has no choice but to initiate some action with respect to a boundary adjustment? We have heard today from other speakers that they would prefer to keep the status quo, that they are in a position of having to defend their territory, those kinds of comments. But as an urban politician, one who is in an urban setting, what other choice do you have?

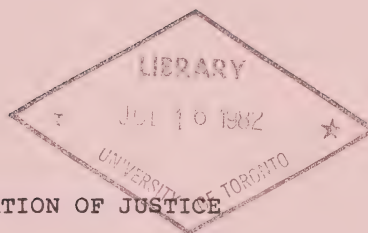
Mr. Warman: I do not really have any other choice. As I see it, we have to instigate annexation based on reports and research that have been given to us on the growth potential of our municipality. Either we go the OMB or we go the new route. I certainly prefer the new route.

Mr. Brandt: What you do see happening if we do not pass Bill 62? Would you give us a scenario that you can develop with your experience of having worked with both systems up to this point?

Mr. Warman: I think the present negotiations will continue to drag on and there will be challenges and counter-challenges. We will continue to spend extra taxpayers' money that, in my opinion, should not be spent.

The Vice-Chairman: No more questions? Thank you very much, Mr. Warman.

The committee recessed at 6:36 p.m.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ORGANIZATION

MUNICIPAL BOUNDARY NEGOTIATIONS AMENDMENT ACT

TUESDAY, JULY 6, 1982

Evening sitting

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riversdale NDP)
Spensier, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Breaugh, M. J. (Oshawa NDP) for Mr. Renwick
Epp, H. A. (Waterloo North L) for Mr. Breithaupt

Also taking part:

Miller, G. I. (Haldimand-Norfolk L)
Phillip, E. T. (Etobicoke NDP)
Rottenberg, D., Parliamentary Assistant to the Minister of Municipal
Affairs and Housing (Willson Heights PC)

Clerk: Arnott, D.

From the Ministry of Municipal Affairs and Housing:
Martin, D. K., Manager, Organization Policy Section, Local
Government Organization Branch
McNeely, D. J., Manager, Land Management, Land Operators Branch
From the Ministry of the Attorney General:
Fader, J. A., Deputy Senior Legislative Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, July 6, 1982

The committee resumed at 8:50 p.m. in room 228.

ORGANIZATION

Mr. Chairman: We have sufficient members here, can we go on the record for this and get down what we have? We are on the record. Can I reiterate where we are?

We shall be sitting next week starting on Tuesday. We shall sit Tuesday, Wednesday and Thursday and thereafter we will play it by ear. If needed, we will sit certain evenings in the second week of the hearings to accommodate certain witnesses. The clerk will put advertisements in the paper in his short list of dailies inviting groups to make presentations to our committee.

In the meantime the parliamentary assistant to the Minister of Municipal Affairs and Housing (Mr. Bennett) and the Liberal and NDP critics will provide the clerk, either today or tomorrow, with lists of witnesses for the first of the two weeks. That will at least get things rolling until the advertisements bear fruit.

What else did we cover?

Mr. Breaugh: Mr. Chairman, I wonder if you would help me to just personally organize my schedule for those weeks. Could we agree that next week, Tuesday, Wednesday and Thursday, we will do morning and afternoon sessions from 10 to 12 and two to five? The following week we will begin Monday, at two in the afternoon, and we will be prepared to take a look at an evening session or one or more evening sessions in that week.

So the first week we have it nailed down morning and afternoon. In the second week we would come back Monday in the afternoon and we will then schedule the remainder of the week.

Mr. Chairman: It sounds fair except for the second Monday afternoon. How does that sit with people?

Mr. Mitchell: I said for myself, personally, so do not put me on record on that. I said that Thursday we would adjust the schedule for the following week, that Monday afternoon to me personally was not offensive, but I think we have to play it by ear for the following week.

Mr. Breaugh: I am just suggesting that when you start on a Monday there are often travelling problems in order to get in here for 10 in the morning.

Mr. Epp: I would just as soon not sit on a Monday if I can help it.

Mr. MacQuarrie: I find Monday a very difficult day too.

Mr. Chairman: Unless we alter it during the first week, shall we then have a Tuesday morning start in the second week?

Mr. Breaugh: I am just a little bit concerned. I do not want people to get cut out of appearing before the committee because individual members cannot be here. I could tell you that I would rather not be here on a Monday, too, but if it means that some groups are not going to be heard, I will be here.

I think all of us can work some arrangement so that the committee can have its hearings. If some of us are late getting to the meeting or have a travel problem, we all understand that. The purpose of the exercise is to have a public hearing and get it on the record. We can read it later in Hansard if we cannot be here personally.

Mr. Mitchell: Mr. Chairman, quite frankly I have said that I can live with Monday afternoon if I had to. However, a number of people who come a fair distance do have a problem. Herb has expressed some concern. We have said that by the Thursday of the first week we should be able to identify what the demands are.

You raised the issue of witnesses and whether it would be possible for the committee to sit evenings. I think that matter should be discussed first before we decide whether we are going to sit on Monday.

Mr. Chairman: Matters are divided now. Shall we leave that decision of a Monday or Tuesday start in the second week until Wednesday or Thursday of the first week when we shall see our schedule, how many witnesses we have and so on? Can we do that?

Mr. Breaugh: Yes. The only proviso I am putting on this is that you are starting off with about 50 groups who want to appear. You are not going to hear those in three days of sittings.

Mr. Chairman: That brings up the next issue.

Mr. Rotenberg: These are 50 groups who have expressed an interest in the bill. All of them may not want to appear.

Mr. Breaugh: I understand.

Mr. Chairman: May I then bring up the next question? I am slightly ducking the resolution of that. How much time are we going to ask the clerk to allow each group, as we start off? We will have to adjust as we see the results of our advertisement. But what we are going to use: a half hour; an hour per group?

Mr. Breaugh: I think you are going to have to have some variance there because you are going to get from one extreme to the other. One particular industry may come in that simply wants to state its piece. You are also going to be faced with large

cities, such as Toronto, which is going to have a very complicated case to put forward. I am sure some will be able to state their case in 10 or 15 minutes and that is really all they want to do. Others will be in here arguing a much more complex set of issues and are going to need the hour.

Mr. Chairman: What will be the average that we start off with?

Mr. Breaugh: I would suggest out of the invited groups that will be likely to appear in the first three days of hearings, you slot at about three quarters of an hour each.

Mr. Chairman: Average.

Mr. Breaugh: Yes.

Mr. Chairman: And let the clerk use his judgement as to whether it goes for a half hour or an hour on that.

Mr. Breaugh: Yes.

Mr. Epp: You are going to have some go an hour or some go 15 minutes.

Mr. Chairman: Correct. Is there anything else anyone wants to bring up?

Mr. Philip has asked that we send for him because he insists that we bring up the issue of Bill Pr13 and that we discuss now what its disposition will be. If the House were to sit up to and including this Friday, that would be the only business in front of us in view of the fact that Windsor is not having a council meeting this week to decide what it wants to do about Bill Pr6. Therefore, that would be the only business in front of us if the House were still sitting on Thursday and Friday. Mr. Philip will be here in a minute to make representation.

Does anyone want to say anything else about Bill 11 that we have not dealt with, witnesses, advertising, and so on?

Mr. Mitchell: No, I think we finished with that. While Mr. Philip is wending his way down here, we have the bill that is on our plate for today. We are sitting some extra time and I think we have to deal with that one. I could be wrong, but I think at this time all we can indicate is that if this Legislature is in session, you may be able to work the schedule.

But at this point we have the Solicitor General for tomorrow and beyond that point I do not think we can forecast or identify a time. We are already identifying working one bill within a schedule that was approved by the House today and no other sitting time has been allocated.

Mr. Chairman: We do have two witnesses tentatively scheduled for Thursday afternoon on Bill Pr 13, if the House is still sitting.

Mr. Mitchell: That is my point.

Mr. Chairman: Tentatively, and they have been well advised as to the circumstances.

Can I go back to Bill 11? The short list of dailies is 47 newspapers in Ontario. It costs about \$7,000. That is what we had in mind, not restricting it to Toronto. That is sort of the standard, short list of dailies.

Any other comments on Bill Prl3 before Mr. Philip gets here?

Mr. McLean: When is it your intention to deal with it? In the fall after the House goes back in?

Mr. Chairman: Yes. That is the next time we will be meeting, unless the House goes into next week, in which case that would be the only business in front of us.

Mr. McLean: I thought when we adjourned the last time the committee was adjourned sine die?

Mr. Chairman: No. The North York bill is adjourned sine die. Bill Prl3 is the demolition bill. It is in front of us when we do not have anything else specific to deal with.

Here is Mr. Philip. Mr. Philip, Mr. Mitchell made a couple of comments about Bill Prl3. The way the situation is now, we have Solicitor General's estimates tomorrow and then Bill Prl3 is next.

Would you wish to make representations on Bill Prl3?

Mr. Philip: Mr. Chairman, I would be interested to know from the clerk, as I have heard from one or two deputations, how many are still on our list on that bill.

Mr. Chairman: Twelve, if I am not incorrect.

Mr. Philip: And you are suggesting that we sit on Thursday of this week?

Mr. Chairman: Tentatively, if the House is sitting--only if the House is sitting--there are two sets of witnesses who have been invited and they know it is very tentative.

Mr. Philip: From everything I can gather though, the possibility of the House sitting, in view of the speed at which we are progressing at the moment, is not very great. I am just wondering what is the wish of the committee since these people have prepared with considerable rush some of their concerns and are anxious to make their views known to the committee. I would hate to lose some of the steam of it.

Is it the intention of the committee that the committee sit and at least hear delegations? We could do it in perhaps two or three days. Have you approached the House leaders on that?

9 p.m.

Mr. Chairman: I have not. Mr. Mitchell?

Mr. Mitchell: Mr. Chairman, again, my understanding of the rules is that if the House does recess, in fact this committee ceases to sit except in times solely approved by the House and that sitting time was approved today.

Mr. Philip: By the same token though, there would be nothing wrong with the chairman of the committee exercising his responsibility as chairman and going to the House leaders and saying: "We have 12 delegations that have expressed their intent and desire to have their views known before the committee. We are dealing with a bill at the present time and it seems unreasonable to interrupt the work of the committee."

The House leaders can decide whether or not they can easily introduce another motion tomorrow, if all three are in agreement, to allow us to sit for an extra three days and hear those deputations that are very concerned about this particular matter.

Mr. Mitchell: Speaking for myself, if the House recesses I have, like all of us have, considerable work to catch up on. Because we are sitting the following two weeks I am behind in constituency stuff which must be looked after. If we are here, then unfortunately we are here and we will sit. I think we have to follow whatever rules are laid down.

Mr. Philip: I am sure Mr. Mitchell lives in the same world I live in and I am sure he has talked to some of the people around here and I am sure that he knows that we are not going to be sitting on Thursday unless there is some great unforeseen event of somebody filibustering a bill or some such thing.

I am quite open to the possibility of the committee looking at sitting some other week or sitting some other days, but I just do not think these people should be left dangling. I don't think we should be saying, "Well, we will possibly hear you some time in October or whenever."

I am open to meeting whenever the chairman and the House leaders might be able to agree on. It could be three days sometime during the summer months or in early fall or whenever that is reasonable.

Mr. Chairman: Mr. Philip, the chair is not going to take on himself the responsibility of dealing with this. The committee can instruct me to do it or otherwise. Now would someone please make a motion and dispose of Bill Pr 13 one way or the other, fairly quickly?

Mr. Breaugh: Can I help you out there?

Mr. Chairman: Mr. Breaugh moves that the committee ask the chairman to consult with the House leaders to see if three days of hearing time can be scheduled during the recess and provide them with an opportunity to put the motion before the House before we adjourn.

Mr. Breaugh: The simple idea is three days of hearings some time during the recess. The chair is authorized to meet with the House leaders and see if they are prepared to put that motion before we recess.

Mr. Chairman: Fine. May I have the question? All those in favour of Mr. Breaugh's motion please raise their hands? How many are voting?

Mr. Philip: I do not have a vote.

Mr. Breaugh: I have two votes.

Mr. Chairman: All those opposed please raise their hands? Six.

Motion negatived.

Mr. Chairman: We will take Mr. Miller as a voting member. All right, that does not deal with it. Would somebody please put a motion disposing of it one way or the other? I would welcome a motion that the matter be dealt with this week while the House is sitting and then not again until the fall, or simply that nothing be done. We meet this week and leave it open-ended. I cannot make a motion.

Could somebody give us a motion? What do we do with Bill Pr 13?

Mr. Stevenson: I move that if the House is sitting on Thursday that we hear the two groups or individuals who have already been notified, and from that point on the situation be left open and dealt with in the fall.

Mr. Philip: That is great. You just prepared my press release for me. Thank you very much.

Mr. Chairman: Fine. May I have the question? All those in favour of Mr. Breaugh's motion please raise their hands? How many are voting?

Mr. Philip: I do not have a vote.

Mr. Breaugh: I have two votes.

Motion negatived.

Mr. Chairman: All right, that does not deal with it. Would somebody please put a motion disposing of it one way or the other? I would welcome a motion that the matter be dealt with this week while the House is sitting and then not again until the fall, or simply that nothing be done. We meet this week and leave it open-ended. I cannot make a motion.

Could somebody give us a motion? What do we do with Bill Pr 13?

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we hear the two groups or individuals who have already been notified, and that from that point on the situation be left open and dealt with in the fall.

Mr. Philip: That is great. The member just prepared my press release for me. Thank you very much.

Motion agreed to.

Mr. Chairman: Shall we go ahead with the question at hand?

MUNICIPAL BOUNDARY NEGOTIATIONS AMENDMENT ACT
(concluded)

Resuming consideration of Bill 62, An Act to amend the Municipal Boundary Negotiations Act.

Mr. Chairman: Mr. Philip, we are through with Bill Pr 13. We are now back on Bill 62.

I understand we heard from the last witness just before we broke at 6:45 p.m. approximately. I will now go into clause by clause. Where is a copy of the bill? Are there any comments upon clause 1?

Mr. Breaugh: Before we begin, I wonder if I could hear from the parliamentary assistant as to how he is going to receive the amendment that has been proposed by Tiny township.

Mr. Rotenberg: The short answer is--

Mr. Breaugh: Give me the short answer please.

Mr. Rotenberg: I will give you the short answer and a explanation if I may. The short answer is that I would not recommend the amendment by Tiny township, which in effect is to say that withdrawal is by consent of both parties.

Mr. Elston: Or by negotiaton.

Mr. Rotenberg: By negotiation is not a problem. I would like to comment on the bill and on the presentations made this afternoon.

I would like to confine my comments to Bill 62. Everybody did stray somewhat off Bill 62. As far as I am concerned, when discussing Bill 62, we should not be discussing the merits or lack of merits of the various applications that may now be before the Ontario Municipal Board. I do not think whether the applications have merit or do not have merit is really relevant to our discussion.

I also do not think we should be talking about the merits of the old annexation procedure versus the merits of the new process. We have some very definite opinions of those merits.

Again, I do not think that is really relevant to our discussions. I think really what is relevant to our discussions is

what is fair and equitable, what is the law, what has been in the law and what should be the law, and because it was raised by the solicitor for Vespra, what were the intentions of the ministry and of the House and of the government when Bill 147 was passed last fall.

Because I was quoted in Hansard this afternoon by Mr. Mandel, to review, it says what I said. I do not back away from it one bit. We are saying those cases before the board, being dealt with by the board, will be under the old rules and not under the rules of this act. I said further, "In other words, anything now in process before the board is under the old rules." That is what I said back in February last year and I have no qualms about standing behind that.

You will recall that towards the end of the afternoon I put the question to Mr. Conlin, who, although I do not agree with everything he said this afternoon, I certainly respect as a long-time senior counsel in the municipal bar. I asked Mr. Conlin if, in the absence of Bill 147, a municipality would have the right at any time to withdraw an application under section 14 before the municipal board. He said yes and then qualified it by certain other things under the new process.

The key is that under the old rules, a municipality had the right to withdraw their application before the board. What I said when this Bill 147 went through the House was that those applications that are now before the board will be dealt with under the old rules. I said it and I meant it. Any person dealing under section 14 under the old rules would have the rights of withdrawal under the old rules.

When we put through section 24 of Bill 147 we said the board shall hear and determine the subject matter of the application. That has been interpreted--not by our ministry but by other lawyers, for whatever reason--as saying that that takes away the right of withdrawal.

Our ministry and our lawyers are not of the opinion that takes away the right to withdraw an application. Under section 14, the board shall hear it if it is there. But if a municipality made the application for withdrawal and said it is no longer before the board, there is no application that the board shall hear.

That is our interpretation of the law. The reason that Bill 62 has been introduced by the ministry is that our interpretation of the law was challenged in the courts by one of the municipalities before us who said: "Wait a minute, you cannot do that. We read this section as saying the board shall hear and determine the subject matter of the application, so that means you cannot withdraw an application."

I cannot say if that went to court which interpretation would hold, how a court would find.

9:10 p.m.

Mr. Elston: You would have some trepidation, however.

Mr. Rotenberg: We don't have trepidation, but the point is that if it went into court and they found against it we, as the legislators, would quite probably bring forward a Bill 62 anyway because the Legislature has the right to write the law. If the law is not written the way the Legislature wants, we have amendments.

We are doing this rather than have it go to court because, as some of you who sit on the general government committee who are reviewing the Planning Act know, we would like to make our legislation as lawyer-proof as possible rather than have it go to court. All going to court will accomplish will be that a number of municipalities will spend a lot of money.

Rather than just say, "Okay, go and spend the money and go to court and see what you can get," it is our opinion in the ministry and the government that we should make what we think the law says very clear the first time and not waste the time and the money of the taxpayers of various municipalities in Ontario arguing over the interpretation of present law because it is not going to accomplish anything.

There is not a change in government policy in our interpretation. There is not a change of the act; it is a clarification of the act.

The word "retroactive" has been used quite often this afternoon. It was said that this is some kind of retroactive legislation taking away the rights of people who had rights. The only thing that would be retroactive, if we adopted the policy as suggested by Vespra and Tiny townships, is it would be retroactively taking away the rights of Barrie, Midland and other municipalities, which always had them, to withdraw an application before the board.

Mr. Conlin said to us that before Bill 147 they had that right. If his interpretation of section 24 of Bill 147 is correct then it is section 24 of Bill 147 which is retroactively taking away people's rights and not Bill 62. If their interpretation is correct, and I do not necessarily agree with it, then section 24 is the one that is retroactively taking away the right and Bill 62 is correcting that inequity.

I really cannot admit, concede or even understand what rights are being taken away from Barrie, from Tiny and from any other townships if Bill 62 passes.

If Barrie's or Midland's application goes forward to the Ontario Municipal Board, if we do not pass Bill 62, what is the best result that Tiny or Vespra townships can get? The best result they can hope for through the Ontario Municipal Board is they get a clear win, the application is dismissed. That is the best they can hope for.

I suggest to the members of the committee that if the application is withdrawn they are in that exact position. They are in the same position if the application is withdrawn, or if the application is turned back, as if the application and annexation is gone. They are in that same position.

Mr. Elston: But, but.

Mr. Rotenberg: But--I am glad we have the lawyer here from Huron-Bruce. The allegation is made, not in law but in practice, that if the municipality had a hearing before the Ontario Municipal Board, and had a clear loss, they could not apply again the next day.

I am using these four municipalities as examples since they are the ones before us and the ones we are talking about. But say Barrie or Midland or others went before the Ontario Municipal Board and had a clear loss. In other words, if their application was rejected, they could not go back to the OMB the next day and have another hearing, or apply again.

That is a practice of tribunals. It is not in legislation. There is nothing in our Municipal Act before Bill 147 which prohibits a municipality from going back a week later after the OMB turned them down.

But if the municipality, Barrie or Midland, had a clear loss at the OMB, there is nothing in my understanding of court practices which would prevent them from going under Bill 147 under a different process.

If you sue another party in court and you lose you cannot go back and initiate another lawsuit next week for the same situation, but you can sue them for something different, or you can sue them under another section of another act.

It is my contention that even if these two municipalities, Barrie and Midland, are before the OMB and have a clear loss, nothing in practice would prevent them from applying for negotiation under the Municipal Boundary Negotiations Act, because that is a different act and a different process.

To come back to the situation, what do Tiny and Vespra townships lose if Bill 62 is passed? I come to only one conclusion.

Mr. Breaugh: On a point of order, Mr. Chairman. Can you tell me if we are on clause-by-clause debate of a bill, or a point of personal privilege?

Mr. Chairman: No, I asked for clause by clause and then you invited the parliamentary assistant to address himself to the bill.

Mr. Breaugh: No, I invited him to address himself to the amendment proposed by Tiny township.

Mr. Rotenberg: That is what I am doing.

Mr. Breaugh: You have not hit it yet. How many years will it take before you get to it? The OMB is faster than you are.

Mr. Chairman: On that point of order, Mr. Elston had a comment.

Mr. Elston: I think Mr. Rotenberg is going to probably get around to it sooner or later. He usually does. He is going to tell us exactly why he does not want the amendment in there. I think we should hear him out before we jump on him.

Mr. Breaugh: You have more faith in him than I do. That is only because you have not known him as long as I have.

Mr. Chairman: Would you carry on, Mr. Rotenberg?

Mr. Rotenberg: Mr. Chairman, I thank the member for Oshawa for his confidence in my abilities.

As I say, the only thing Vespra and Tiny lose is time by having the amendment which they are proposing, which says they can only be withdrawn through the OMB with their consent. It is obvious they would not give their consent. But by forcing these hearings before the OMB, all they gain is time.

Mr. Chairman, I am certainly like the lawyers who are before us who made certain accusations against the ministry. I certainly am not going to make any accusations against these lawyers or their clients the townships. I am sure they are acting in what they think are the best interests of the people of their townships.

Mr. Elston: So do the people of the townships. They have been re-elected time after time.

Mr. Rotenberg: That is the political process.

Mr. Elston: That is right.

Mr. Rotenberg: But I have to say that the end result of the process, at best for those two townships, is that they are going to gain some time. That is, they will be able to delay the inevitability of a final decision.

At worst, and this is my opinion without any reference to the merits of these two applications, but generally, in the annexation applications, having spent a lot of time on the boundaries bill, it is my considered opinion, having been through several processes and the whole philosophy, that the townships and the rural municipalities have a better shot in the new process than the old process.

With the OMB you win or you lose, it is like throwing dice, whereas in the new process they have a lot of chance of getting negotiations and conditions so they can come up with a better deal. It is my considered opinion that they would be better off with the new than the old process. That is only my opinion.

Mr. Epp: Can I ask a question? Is that why you are doing this? Are you trying to help Vespra and Tiny townships against their wishes?

Mr. Rotenberg: No.

Mr. Epp: Are you saying they are going to have a better opportunity under your interpretation of the act?

Mr. Rotenberg: Mr. Chairman, I indicated at the beginning that the reason for this bill has nothing to do with the merits of the applications, or the merits of the two processes. The purpose of the bill is to restore implicitly what we think is the right that both Barrie, Midland or any other applicant has always had, as admitted by Mr. Conlin, the right to withdraw.

We think that Bill 147 continues that right to withdraw, but other people have challenged that and, therefore, Bill 62 is simply to, in my opinion, stop the arguments over the interpretation of section 24 of Bill 147, allowing all municipalities to get on with their job.

For that reason, Mr. Chairman, on behalf of the government, we would support the bill without the amendment of Tiny or Vespra.

Mr. Breagh: Twenty minutes later, can I get your reasons why you are not prepared to accept the amendment? I do not want a debate about the bill in principle for the third time, I would just like to get you to address yourself to what appears to me to be a reasonable and compromised amendment which has been drafted here.

Mr. Rotenberg: Mr. Chairman, it is our opinion that a municipality that makes an application should always have the right to withdraw unilaterally on any application.

Mr. Elston: On the understanding that if it should die there--that is the difference between the situations.

9:20 p.m.

Mr. Rotenberg: The amendment would, in effect, mean that they would not be able to withdraw because Tiny and Vespra have indicated that they want to go forward with the Ontario Municipal Board--whether these two applicants do not want to go--and it is not a compromised amendment. The effect of the amendment is to kill the principle of the bill as far as these two municipalities are concerned.

Mr. Breagh: Are you prepared to go through the clause by clause? I would be prepared to put the amendment that has been submitted to the committee by Tiny township on a clause-by-clause basis and if you are going to do that under section 1 of the bill, it would be right away. So if it is in order, Mr. Chairman, I will put the amendment.

On section 1:

Mr. Chairman: Mr. Breagh moves that section 1 of the bill be amended to read as follows: 24(3) "A municipality that has filed an application under section 14 with the municipal board prior to February 1, 1982, may, with the consent of the respondent municipality, at any time before the board has made an order

finally determining the matter, and subject to such order as to costs as the board may make, withdraw the application."

We have the amendment of Mr. Breaugh to section 1 of the bill. Is there any further discussion on that?

Mr. Elston: Unless Mr. Breaugh wants to address himself to that amendment first.

Mr. Breaugh: Very briefly. This is, word for word, the amendment that has been proposed by Tiny township. It seems to me to be a reasonable compromise between the absolutes of saying nothing and withdrawing the bill, which would be my first option, and, secondly, allowing us to continue in some measure of good faith with these municipalities.

It does seem to me it provides the middle ground that you can revert with the consent of the municipalities. In other words, some negotiated settlement could occur. That seems to me to be eminently reasonable and in the middle of a rather bitter dispute, it is rather refreshing to find such a reasonable proposal being made.

I find the amendment causing no difficulty really. I am a little confused as to government's adherence to its present position, but then they have managed to confuse me with their position on this whole matter all the way through.

Mr. Brandt: That being the case, we should repeat the amendment.

Mr. Breaugh: The amendment, for the sake of those who are confused about the situation, is located on page 3.

Mr. Brandt: I did not say we are confused. I just asked you to read it out.

Mr. Breaugh: Yes. It is on page 3 of the submission made by Tiny township. If you are looking for the wording, it begins in the second paragraph which reads, "Prior to enactment of Bill 62..." and I just simply quoted that section 1 should be amended to read as follows and quoting subsection 24(3).

The notable difference is underlined in Tiny township's submission and that is it would be done with the consent of the respondent municipality.

Mr. Chairman: Mr. Epp really had asked before Mr. Elston. Mr. Epp, please.

Mr. Epp: I would be glad to defer to my learned colleague if he wants to speak first; it does not matter.

Mr. Elston: I have several comments and they can be addressed in one way or another to some of the comments made by Mr. Rotenberg with--

Mr. Chairman: Might I interrupt with one comment? It

must be reported back tonight. Period. So, if somebody wants to talk to 10:30, then it gets reported back. But it is reported back tonight.

Mr. Elston: I am not speaking till 10:30.

Mr. Chairman: No. I just want to bring everybody's attention to that.

Mr. Elston: Unless someone wished to hear me speak till 10:30. I am certainly not--can I move that I be able to speak till 10:30?

I do have some comments, and they are very serious ones concerning this particular amendment. Actually they will be addressing some of the concerns raised by Mr. Rotenberg.

The first suggestion I have is that if we put the amendment in the act, the first thing that will happen is that these two parties will have to get together, whether it is Midland or Barrie. If they wish to get back into the new process, they must have the consent of the other party.

Having to have the other party consent means the first thing they must do is get back to the bargaining table and say: "Okay. We have not been able to deal effectively together in the process. At this point, our bargaining has fallen flat, but let us get the process started again. We are willing to look at this in a fresh light."

I think that if new offers are made, perhaps there can be some compromise worked out there. I have listened this afternoon to the suggestions of Mr. Brandt and others that the new process will foster a negotiation and I would say that this amendment would do the very same thing.

My opposition to allowing a unilateral move by either Midland or Barrie is not based on the fact that I think that the new bill is unworkable or anything along those lines. I rather welcomed the bill when it was introduced for the development of the remedial measures to consider annexation. I think it is a worthwhile project and it will work after some considerable discussion and some work.

The fact of the matter is that the bill, as it is, will work for those people who will start the process from February 1 on. Everybody knows what you have to do. Before February 1, everybody knew that you had to go under section 14; those were the rules of the game and those rules had been played by some for five or six years.

I can understand that there has been a great deal of delay but, at the same time, the people who have been elected year after year in the municipalities have been elected on the basis of what they were doing was right, and I cannot help but think that the ratepayers of those municipalities have a feeling for the cause that their council and their advocates have advanced.

The question we have to address next, after we consider the fact that we may be fostering negotiation, is if we put this bill through without amendment, we have to ask ourselves who, basically, is the victor. The suggestion to me, at this point from what I can understand, is that the applicant clearly is the winner, because he again is in the driver's seat.

He, or it, I suppose, initially took the steps to annex by making an application to the Ontario Municipal Board, as was required under the statute, and through various means and processes and through various hearings at tribunals, and even courts, the various balances were checked out between the applicant and the respondent. They worked themselves to a position of a relative state of advantage or disadvantage, depending on which side you were.

Through that process, the respondents in these two particular situations were able to match the applicant stride for stride and work to delay or whatever, but certainly towards defeating annexation of a property in those rural municipalities, which they felt was unfair to the people who would remain.

I cannot help but think, in my own case coming from a rural municipality, that there is a great degree of hesitation by the rural municipalities to build up one of those solid tax bases close to a built-up area, as is always suggested by our planners now, only to find out four or five years down the road that it is coveted by a larger, more urban municipality looking for an increasing and enlarging tax base.

I know the member for Sarnia was involved in a number of situations which dealt with townships around Sarnia. You certainly were able to encourage the development of Sarnia township very close to Sarnia and you lapped up bits and pieces at one time. The city of Sarnia is now considering annexing another portion which includes a major industrial development area plus a major complex which was put up by the taxpayers of Sarnia township.

But all those things taken into account, we really do have to sit back and say: "Okay. Let us figure we passed Bill 62. Then let us look to see who has the upper hand, or if each side gets off with a saw-off."

I cannot help but think that the reason things are not moving is because the applicant has not got the initiative because he has been stymied and forced to come to the respondents to develop another line of strategy, and so far the applicant has not seen fit to do that. As a result, if we do not amend this, we are putting the applicant back in the driver's seat to say: "Okay, you guys, we got you again. Let's get this thing on the road. You do not have anything to hold us up. Let's go."

9:30 p.m.

Then the negotiation, whatever the process will be, will be developed only on the basis of a sort of irritated hesitation--I think that would be the best way to describe it--by those people

who feel they are being run over, not only by the applicant, but almost certainly by the government of Ontario.

For too long we have been using either cabinet powers or the government legislative process to do things in the municipal field which really can be worked out there. They have been worked out in other years.

The other thing you have to consider with respect to who wins this process is that if we pass Bill 62 with the amendment, it is, from what I have heard today, the obvious intent of both the applicant Midland and the applicant Barrie to go to the new process. That is when we will get into the question of whether or not withdrawal, under the Ontario Municipal Board situation under section 14, amounts to the same thing Mr. Rotenberg was talking about.

I would say if they chose to withdraw under that process, once having started it, withdrawal would mean the whole thing is at an end. That would be fine, with the exception that you have provided a way for them to come back and start the whole process all over again. That would be done without allowing either Tiny township or Vespra township, the only two remaining people here, the opportunity of bringing to the new tribunal the arguments of abuse of process and the question of whether or not we are dealing with a different cause of action.

Those are major deletions from their rights as they are now. With respect to the parliamentary assistant, those are things we must consider if we are going to pass this bill without amendment.

I just want to say one other thing which I nearly overlooked when I spoke about negotiations. We went through the list and I did not see a list prepared by the ministry with respect to the seven applications currently pending. Four out of the first five were able to negotiate or at least consent to taking the matter through the new process. I see nothing wrong with that. A fifth one was dropped because of economic causes.

Interjection: It is not dropped.

Mr. Elston: It is not dropped? It is not being proceeded with. In any event, the other two are the ones we are concerned with.

If those first four were able to negotiate a way to get into the new piece of legislation, we could provide the very same means for a negotiated decision to get into the new legislation for these remaining two applicants who have not yet found their way clear.

I also have to make a comment with respect to Mr. Rotenberg's suggestion that Mr. Conlin was saying as matters are currently the applicant could withdraw and all you are providing in this piece of legislation is that same right should remain with the applicant. It is a bit like what I was saying before, but I think you are taking Mr. Conlin's comments slightly out of context.

He was saying then if the applicant were to withdraw, he would also be admitting defeat and would put things at an end. You have to keep that very clear. You were saying if he withdraws under this legislation unamended, he will then be able to start the process all over again.

Mr. Rotenberg: It was under the old legislation too.

Mr. Elston: Well, that is where we get down to the question of whether or not you can come back under the new application and argue abuse of process and whether or not there is a new cause of action available at all.

In the case where it is found there is an abuse of process, the tribunal and others have a way of penalizing the applicant for making that fresh application on an old cause. The cost is placed on the applicant if he is not successful, on a solicitor and his own client basis.

You are saying there is absolutely no argument that can be put forward once they withdraw under the OMB application and admit defeat there. You will give them some costs in that old action, I admit that. Once they decide to withdraw, they can then get into the new piece of legislation and there is not a single thing that can be done on the behalf of a municipality to raise that matter.

You are giving them the right to revive their original application without any new material available to them at all. That is the one thing in our system of justice that I have found; you are not supposed to be able to go through the same process. This is really, with all respect, setting up a new piece of legislation to do the same thing as an old piece. It is not setting up a new cause of action. You are doing exactly the same thing under a new piece of legislation.

Mr. Rotenberg: A lot of different things too. This covers a lot more than just the bare annexation end of it.

Mr. Brandt: Not exactly the same thing.

Mr. Rotenberg: Not the same thing at all.

Mr. Elston: You are getting around to the very same thing, the annexation and that is the object of the exercise. The only thing you are doing is putting in a couple of negotiations before hand. I recognize there is a difference.

Mr. Rotenberg: It solves a lot more things than annexation.

Mr. Elston: Okay. That is the point of this exercise. It gives a new process, a new procedure under Bill 147, or the legislation as it was passed anyway.

The one remaining thing you have to also ask yourself is: What are you doing to the bargaining position to the applicant and respondent in both the Midland and Barrie situations by passing this legislation?

It is obvious from the representations being made here, that Barrie and Midland are going to adopt the provisions of Bill 62 and use them to get a new lease on life.

Mr. Rotenberg: Not necessarily.

Mr. Elston: They both passed those bylaws and they both withdrew them. They are both very anxious, from what I have heard anyway, to get into the new procedure.

Mr. Rotenberg: I would agree with you on Midland, but not on Barrie, because Barrie--

Mr. Elston: The junior alderman seemed enamoured of the new procedure. It seemed to me he was espousing--

Mr. Rotenberg: I am not sure Barrie would, based on their previous OMB situation. They may decide to proceed anyway. I cannot say which way they would go. I would agree with you on Midland but not necessarily on Barrie.

Mr. Elston: What is wrong with asking Midland before they make that decision to bargain with the respondent after this long involvement and get down to a mutual understanding as to what is going to happen?

Mr. Rotenberg: What if they do not agree? What happens then?

Mr. Elston: They proceed and they can go and have their own OMB hearing. They are close to that situation now. They are not that far away from it, if the ministry would allow it to be scheduled on the books of the OMB.

We are always talking about process here and I stand by the ability of the municipalities to deal with the matters as a result of their own decisions. I know there is a difference of opinion between the applicants right now and the respondents, but I would have to say we cannot endanger the wellbeing of the case of the respondent merely to help out the applicants in both these situations.

The amendment proposed by Tiny does have an element of good to it. I think the consent requirement, before the matter is taken into the new process, will lead to a better negotiated understanding if you take the respondents after a unilateral decision by those two applicants to the new process. I think it can be every bit as discouraging to the applicant under the new situation if it is done on a basis of unwillingness on behalf of the respondent, as it is right now through the OMB.

9:40 p.m.

Those are the comments I have to make on some of the things Mr. Rotenberg said and they also touch on why I think the amendment is a good one. I commend it to the other members of the committee, even though I have a feeling the orders are being

dispensed to a number--I have been in this committee before for other matters.

I hope, for once, that we can leave well enough alone. It is a process that has already started and we should not start meddling in what has developed over a long period of time. I feel that would be a mistake. I do not know of any other court or tribunal procedure where we have had legislation jump into the middle of things and say, "Okay, you guys, it is all over; start over again," and then not even consider the relative position of the parties involved.

Mr. Epp: Mr. Chairman, I support the amendment as proposed for a number of reasons. One of the reasons I support it is not because I do not agree with Bill 147.

Bill 147 is one of the finer pieces of legislation I have had the privilege of speaking to in the Legislature. I know the member for Sarnia, who is always very attentive to these matters--he was a little modest earlier--worked hard towards some legislation very similar to Bill 147. I remember one day when he led a seminar of the Association of Counties and Regions of Ontario where he proposed a number of basic principles which eventually were incorporated in Bill 147.

I have no difficulty with Bill 147. It is an excellent piece of legislation. The place I have difficulty with is where we have some form of retroactive legislation. I say that very determinedly, because this is retroactive legislation. I do not care what the parliamentary assistant says, it is retroactive legislation. If he wanted to take it to the highest court in the country, as he is very reluctant to let anybody take some aspects of Bill 147 to the courts, he would find it is retroactive legislation.

The principle of Bill 147 is that there is a lot of co-operation between the two sides. They have to get together and, eventually, if they cannot agree, it goes to the Ontario Municipal Board. What we are talking about here is something that is already before the Ontario Municipal Board. We are talking about two parties which cannot agree. They cannot even agree to come before the government at this point and have some kind of consent whereby they want to proceed under Bill 147.

With Bill 62, we are actually forcing them to go via the one route. This would be quite acceptable to me if both had an equal opportunity. Under the amendment, both of them have the opportunity, if they agree, to go to Bill 147. No one is preventing them from doing that. That is quite acceptable.

Not everyone had the benefit of being in the House when we discussed this in December 1981. There were some interesting aspects mentioned at that time by Mr. Rotenberg. He just happens to be the parliamentary assistant to the minister and speaks for the minister and he was the parliamentary assistant at that time and spoke for the minister.

In other words, whatever is said here, I can only assume is

said on behalf of the Honourable Claude Bennett. Mr. Bennett chose not to be in the House at that time, or any future time for that matter, to deal with legislation--

Mr. Breaugh: Is there still a Claude Bennett?

Mr. Epp: It is important we get this on the record because for somebody reading about this bill later on, unless it is withdrawn by the government which would save all a lot of time, it should be on the record.

It is on page 4784, dealing with Bill 147 where the minister's parliamentary assistant said, "Mr. Chairman, I did not interrupt my friend. I ask him to listen for a moment." It was a long moment. "Despite the fact that this government is probably the best that can be achieved in this province--certainly the people in the province agree--I will agree that we are not totally perfect, and from time to time, especially in dealing with boundaries and dealing with municipalities, they come up with wrinkles that we really cannot anticipate. Something may come up in a dispute or in a bill which is not specifically authorized in this act, and yet both municipalities agree that it has to be part of an agreement."

We have not got that in this situation.

Further: "All the bill says is that if there is an agreement coming forward between two municipalities such as Barrie and Innisfil or Brant and Brantford, and something further is wanted in that agreement which is not specifically authorized in the act, we can do it.

"The other control, of course, is the phrase 'to carry out effectively the purposes or intent of this act.' If it is not explicit and specific in the act giving the minister authority, but it is within the intent and purpose of the act, and the two municipalities want this in their agreement, in effect, we can go forward with the agreement as we have done just today with Barrie and Innisfil, and we will not have to wait possibly three or four months to get a new bill through the Legislature."

I want to digress for a moment. If the government wanted specifically to force the municipalities in this instance to go to the act, they could bring in a bill forcing those municipalities to go directly and proceed under the act. They have that option. They have the majority; they can do that at any time. They chose not to do it so we have to keep that in mind.

To continue: "I repeat, there are similar clauses in the regional acts and the Ontario Municipal Board Act, and I defy the members of the opposition to indicate where those have been abused by this government. This is simply to allow this government, as in the case of Brant-Brantford, with which the member for Brant-Oxford-Norfolk is certainly familiar, and Barrie-Innisfil, to carry forward in a proper manner to implement these agreements.

"As we have seen in the Barrie-Innisfil case, when the two parties get together and are ready to sign, we have to move

quickly before somebody in local politics changes his mind."

Nobody in provincial politics would ever change his mind and nobody in the federal level, but "somebody in local politics." He points his finger at those people in local politics who might change their minds.

He said, "It is necessary to have this authority to implement the spirit and the intent of the act, and certainly not to go beyond that, but to do maybe some of the minor things that are implicit in the act but not explicit."

Then I will skip a little:

"Mr. Rotenberg: Mr. Chairman, I have two amendments to section 24 for clarification. The first is that section 24 really applies to any application now before the board.

"The Deputy Chairman: Mr. Rotenberg moves that section 24 of the bill be amended by adding at the end thereof: 'But unless the board has made an order finally determining this matter within two years of the day this act comes into force, the application shall be deemed to have been withdrawn.'"

That is important because it really gives the impression that if you proceed for two years and unless an order has been made, then it is withdrawn.

"Mr. Rotenberg: Mr. Chairman, the purpose of this amendment is simply that there are now some applications pending before the board and what it says, in effect, is that there is a two-year hiatus during which the board may deal with those applications. At the end of the two years, if the board has not dealt with them, they are deemed to have been withdrawn."

That is if the board chooses not to deal with them, then they are withdrawn.

"All outstanding applications or new ones will come under this act and will not then come under the old process."

"Mr. Nixon: Mr. Chairman, is it possible, while we are doing that, more or less to tidy up what has happened in the past, that we are giving the board the right not to deal with an application but just to ignore it, to sit on it, and it will be deemed to be withdrawn two years later? I do not think that is a very fair approach to dealing with applications which may be brought before the board in the future."

9:50 p.m.

"Mr. Rotenberg: Mr. Chairman, under the board's procedures, the board has an obligation to hear anything that is before it".

That is another thing. There is an application before it. This thing has been referred by the Supreme Court of Canada back to the Ontario Municipal Board and you say here that, "under the board's procedures the board has an obligation to hear anything

that is before it."

"Mr. Nixon: But if it doesn't, it's deemed to be withdrawn.

"Mr. Rotenberg: If for some reason it is not completed in two years, then I guess the municipalities have the choice in that hiatus." The municipalities, the two parties, would have a choice and I presume they would have to agree.

He goes on: "If we had another Barrie type of thing which started now, say, and there were a hearing and court procedures and so on, if that were not finalized within two years, it would be over and would have to go to the new procedure. In other words, they have two years to clean up all the applications before them."

Ms. Bryden asks a question, etc., and this has to do with some other procedures, and then Mr. Rotenberg says:

"Mr. Chairman, two things could happen. As we just discussed, there may be matters before the board now on which they will give an order in that two-year hiatus. We are saying those before the board being dealt with by the board will be under the old rules and not under the rules of this act.

"For those matters now in process before the board, on a future annexation being dealt with by the board or an order already made for an annexation by the board which is some tag ends to be done after the act comes into force, the provisions of the act will not apply to those annexations. Those sections of the Municipal Act will apply to those annexations. In other words, anything now in process before the board is under the old rules.

"Those matters that are done by statute, as we have just finished today with the Barrie-Innisfil bill, will supersede this bill. In other words, the Barrie-Innisfil bill is the one that counts, not this boundary disputes act. The boundary disputes act applies to those that are done by the mediation process and by order.

"Where something is done by statute, as in Barrie-Innisfil or Brant-Brantford, the Barrie-Innisfil bill or the Brant-Brantford bill or similar bills will supersede this particular legislation."

That clearly indicates to me and to any objective person in this committee there was a clear understanding that any application before the board could proceed through the process of going through the Ontario Municipal Board or through the old act. I cannot see in any way how you can all of a sudden translate that into where one party can unilaterally decide to withdraw from that process and then proceed under another process.

Mr. Rotenberg: The party had that right under the old rules, always.

Mr. Epp: But not to go under another process; you are talking about apples and oranges. You are saying they could withdraw under the old rules, but if they wanted to proceed again

they had to proceed under the old rules or not proceed at all. They could not all of a sudden go through some other statute. Now you are saying that under the present legislation they withdraw from the old act, withdraw from the old procedure, they withdraw from the old way of doing things and they proceed under a new way.

I see this as an example of where you are stepping on the rights and privileges of two smaller municipalities in favour of larger municipalities. As you know, if this were Toronto and Midland or Toronto and Barrie you would probably be favouring Toronto over Barrie or Midland. I think this is clearly discriminatory against the two smaller municipalities.

I submit to the parliamentary assistant that he either supports the amendment as proposed this evening, which would in effect make both parties agree to have the application withdrawn under the old process, or withdraw the bill altogether which in essence will accomplish the same thing.

Mr. Swart: Mr. Chairman, I do not want to spend a whole lot of time repeating what has been said, with which I generally agree. Like the others, I do not know a great deal about the merits or otherwise of these annexation applications and I do not think in any event that is relevant to our discussions here today. It is really the procedures that we are talking about. I think all of us want to see that the procedures are fair to both sides. I suggest the amendment we have before us makes the bill so abundantly fair that I do not see really how the amendment can be opposed.

I want to take some issue, too, with what the parliamentary assistant has said, first of all with regard to his statement. I think I am quoting him basically correctly when he said that this bill is really a clarification of the old bill, Bill 147. I do not accept that. I was in the House when the debate took place and took part in the debate on that other bill. It seemed to be clear to me at the time that we exempted from the Municipal Boundary Negotiations Act bill all those cases where the Ontario Municipal Board had received an application.

Most of the discussion that has taken place here today has used the words, "where an annexation is before the board." If you look at the act that is not what it says. Section 24 of that act says, "Notwithstanding subsection 23(3) of this act, where the municipal board has, on or before the day this act comes into force, received an application under section 14 of the Municipal Act..." That is pretty clear in my view; it says where they have received an application.

Neither the parliamentary assistant nor anyone else on the government side took the opportunity to dispel what the bill in effect says and what we believe. That was to supersede section 14 of the act where they could withdraw them. I bet there is not a member of the Legislature here who felt that a municipality could unilaterally withdraw from the Ontario Municipal Board. It was never said. It says in the act that, "where the municipal board has, on or before the day this act comes into force, received an application"--for annexation--"the board shall hear and determine

the subject matter..."

I would assume that was a deliberate policy of the Ontario government so that two acts, two procedures, could not apply at the same time. I suggest that was the interpretation those in the Legislature, including those in the Conservative Party, put on this bill and the interpretation municipalities across this province rightly put on this bill.

You indicated this is not taking away any rights of the municipalities, of the townships, of the respondents. I suggest that is not correct. It is taking away the right they had to proceed with that at the Ontario Municipal Board.

You can say, "Well, of course, under the old legislation a municipality had power to rescind its bylaw or to pass a bylaw to amend it," but the facts are, if they passed such a bylaw and withdrew it, they were abandoning the annexation proceedings. You know that and I know that. They are abandoning the annexation proceedings. If they withdraw it now, they are not abandoning the annexation proceedings, they are just using another route. So of course you have taken away some of the rights of the townships.

10 p.m.

Under the plan we had before, both municipalities were parties to getting an annexation proceeding to the Ontario Municipal Board. There is no question about that. One municipality passed a bylaw to annex the neighbouring municipality; the neighbouring municipality did not like it, they objected and there was an Ontario Municipal Board hearing. If they agreed to it, they did not even need an OMB hearing; there was just an order given by the board, but no hearing.

If that is the case, both parties now should be parties to the withdrawal of it. Is that not reasonable? Before December 1981 if one municipality that passed a bylaw for annexation withdrew it, it was capitulating, it was abandoning its annexation attempt.

Mr. Rotenberg: They could bring in a different type of annexation.

Mr. Swart: But the Ontario Municipal Board would throw it out. The OMB would not hear it again if they had made a decision on it, if a municipality had abandoned it. Several years would have to go by before they would even consider it. I have been through many of these municipal annexation hearings and I know how they go: when the municipality withdraws it they are abandoning it.

If the municipality withdraws, if Barrie withdraws or if Midland withdraws, they are not at all withdrawing because they are abandoning it, and they are the first to admit it; they are withdrawing because they are going to use another procedure. That puts the other municipality, which does not have that power, at a real disadvantage. It is not fair.

In fact, what we have here is a system that up until

December 1981 was abundantly fair to both sides. People can argue one side or the other, but it was really fair to both sides. It may have been costly. Then the government comes up with another procedure, which is the Municipal Boundary Negotiations Act, Bill 147, which is also relatively fair to both sides. There is no question about it. I supported that bill.

In that bill at that time was a clause that during the interim period those who had an application to be before the Ontario Municipal Board could only use the one procedure. You use either one or the other, and that is what all of us thought when we passed the bill: that municipalities would be using either one or the other, not that in the case of those seven municipalities or seven cases, whatever it is, where there were hearings, one party to those hearings in each case would have the right to choose either procedure but not the other party. That is grossly unfair.

The bill we have before us establishes a degree of unfairness that did not exist under the old proceedings under the Ontario Municipal Board and that does not exist under the new proceedings. Are we going to permit that unfairness to exist in the interim period? That is exactly what this bill does. This is fact. I do not think members in the other parties can deny that it does give an option to one side to use two routes that at any other time they do not have; they will not have it in any future annexations or under the Municipal Boundary Negotiations Act, and in the past they have not had that opportunity.

For this period of time you are saying, "Yes, apart from being retroactive, we will permit this unfair system to be in place." Why should we do that? It is simply not fair. In principle I do not care which side. I know there are more votes in Barrie than there are in the townships surrounding it. I know there are more votes in Midland than there are in Tiny township, and I do not think you people consider that this should be the major issue any more than we do.

The major issue is one of fairness, and I suggest to you that what we do if we pass Bill 62 is establish for a period of time a degree of unfairness that has not existed in the past and will not exist in the future. And we should not permit it to exist. If we pass this amendment, it will make it fair; if not that, if we kill the bill, it will make it fair.

I appeal to all members of this committee not to let that go through as it is in that bill.

Mr. MacQuarrie: Mr. Chairman, quite frankly I am having some trouble with the amendment. In fact, I do not see that it improves the situation at all with respect to fairness, fostering negotiations or anything else.

What it does, really, is to give a party to an application before the Ontario Municipal Board a right that that party did not have before. In effect, instead of fostering negotiations, if a municipality were involved in a situation where it was the respondent and it wanted to delay, you are simply giving that

respondent four aces.

Mr. Elston: Well, the bill as it is--

Interjections.

Mr. Chairman: Mr. MacQuarrie has the floor.

Mr. MacQuarrie: In effect, the bill allows a municipality, if it chooses, to discontinue its application before the Ontario Municipal Board and to take advantage of the Municipal Boundary Negotiations Act. Really when people talk about fairness and unfairness I think the amendment holds out to both parties to the matter in dispute and their ratepayers the prospect for the equities, the fairness and all the other items that were built into the Municipal Boundary Negotiations Act.

The other thing I have yet to be satisfied on is the dispute about whether or not a party can withdraw its application before the Ontario Municipal Board and subsequently in short order file another application. I do not think the implications that flow from a withdrawal are quite as serious as might be thought. Municipalities can pass a bylaw annexing part of an adjacent municipality at one meeting, and at the next meeting they can vary the boundaries of the area being annexed, constituting two really separate annexations, the latter one, of course--the bylaw--repealing or rescinding the one passed at the earlier meeting.

Consequently I think the section as it stands satisfies the basic principle of fairness in boundary disputes. I do not think any of the parties, even the four that have made representations here today, are being in any way prejudiced. Some of them say they are giving up rights and they are cast in a position of uncertainty and all the rest of it. But I think the worst that can happen to them is that they are put into the new process where they start even under a clearly defined set of rules that have proven to be extremely satisfactory, far more satisfactory than the section 14 process, which has been more or less a municipal bloodletting.

Mr. Chairman, I oppose the amendment and support the section as it stands.

10:10 p.m.

Mr. Chairman: Thank you. Mr. Brandt, I am now within four minutes of calling all debate to an end. Either the votes take place immediately and I then report back to the House, or I report this bill back to the House without votes, because the order of reference from the House is that this bill be reported back to the House by this committee on Tuesday, July 6, 1982. We have no choice. Do you wish to take about two of those minutes to speak?

Mr. Brandt: A whole two minutes?

Mr. Chairman: Two minutes or nothing.

Interjections.

Mr. G. I. Miller: Mr. Chairman, is there room for two for two minutes?

Mr. Chairman: Exactly, two for two--

Mr. McLean: On a point of order, Mr. Chairman: That is not fair. After all, one guy read half of the night's Hansard; another fellow talked for 15 or 20 minutes who was hardly here all afternoon. What is the matter with this side getting a few comments?

Mr. Epp: Mr. Chairman, I agree with him. I think you should give them the time they want to--

Mr. Chairman: No, the chair is not going to do that.

Mr. Breaugh: It is fair to let him talk it out, okay?

Mr. Chairman: We have the instructions of the House, which take precedence over this committee. We have our frame of reference.

Now, out of two minutes we are now down to a minute and a half.

Mr. Brandt: Mr. Chairman, with the minute and a half that is remaining I would like to make a couple of remarks.

Quite frankly I have some difficulty with the amendment, as my colleague does, particularly because the suggestions on the part of some of the members of the opposition suggest that the urban municipalities will have an unfair advantage if this amendment is not passed.

I cannot quite follow that line of reasoning, because the path that both sides are on, so to speak, with the Ontario Municipal Board procedure is one in which I firmly believe. I say this sincerely to Tiny township and to the others who are involved in the application--they are both going to lose. The track record of OMB applications is not good. It is a track record that indicates not only a very substantial loss of time but, I think even more important, a tremendous loss of money to the municipalities that have been involved in the procedure.

One of the difficulties I have is that the suggestion that the urban municipalities are going to be the winners in this whole process, I suppose, in some respects ignores the fact--

How much time do I have left? I am talking as fast as I can.

Mr. Chairman: Faster.

Mr. Brandt: The urban municipalities are quite obviously placed in the position of having to initiate the procedure. The cards are stacked to a certain extent against them, because they

have to wear the black hat right from the beginning; they have to be the bad guys.

This is not to say the procedure that is incorporated in the new process favours one side or the other, because I believe very firmly that it does not favour either side. I believe it is a more expeditious and a more inexpensive way of dealing with a very difficult and complex problem. But the urban municipality is placed in the position of having to initiate the process, and I believe they should have the alternative and the opportunity to consider which of the two alternatives is the better and perhaps the more expeditious process to initiate.

In this instance I think it has to be that of defeating this amendment and going to the new procedure, which I believe, and I say this to Tiny township as well, will be better for them in the long run although they may not believe that at the moment.

Mr. Chairman: Thank you very much. That has to end it. Mr. McLean waited very patiently, but I am sorry, Mr. McLean, Mr. G. I. Miller and Mr. Eves, we have to close this off right now. Certainly there has been full discussion: Each of the New Democratic Party members, two Liberals and two Progressive Conservatives have spoken.

All those in favour of Mr. Breaugh's amendment please raise their hands. Five are for the amendment. All those opposed please raise their hands. Six.

Mr. Breaugh: I would like to have a recorded vote on that too, Mr. Chairman.

Mr. Chairman: Recorded vote very quickly, Mr. Clerk. Who were those in favour?

Clerk of the Committee: Mr. Breaugh, Mr. Swart, Mr. Elston, Mr. G. I. Miller, Mr. Epp.

Mr. Chairman: All those opposed?

Clerk of the Committee: Mr. MacQuarrie, Mr. Eves.

Mr. Chairman: Mr. Brandt, how are you voting?

Mr. Brandt: I am voting in opposition to a badly-filed amendment.

Clerk of the Committee: Mr. K. R. Stevenson, Mr. McLean, Mr. Mitchell.

Mr. Chairman: Again, the motion is defeated, six to five.

Sections 1 and 2 agreed to.

On section 3:

Mr. Breaugh: An amendment to section 3?

Mr. Chairman: No, there is no time for amendments. I am sorry.

Mr. Breaugh: Just a quick amendment that the short title be changed to the Rape of Tiny and Vespra townships.

Section 3 agreed to.

Mr. Chairman: Shall the bill in its entirety carry?

Interjections: No.

Mr. Chairman: Recorded vote?

Interjections: Yes.

Mr. Chairman: Same vote? Gentlemen, we are fooling around. Same vote? Thank you.

Shall the bill be reported?

Interjections: No.

Mr. Chairman: It must be reported, gentlemen, under motion of the House. Form only.

Bill 62 reported.

The committee adjourned at 10:18 p.m.



Lacking J-23, 1982.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

MUNICIPAL LICENSING ACT

TUESDAY, JULY 13, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breaugh, M. J. (Oshawa NDP)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Epp, H. A. (Waterloo North L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

MacDonald, D. C. (York South NDP) for Mr. Swart

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of
Municipal Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

From the Ministry of Municipal Affairs and Housing:

Noble, W., Adviser, Functions Policy Section, Local Government
Organization Branch

Sypnowich, M. A., Manager, Functions Policy Section, Local
Government Organization Branch

Witnesses:

From the Board of Trade of Metropolitan Toronto:

Baird, J. A., Member, Legislation Committee

McCracken, J. S., Manager, Legal Department

Scrivener, A. M., Member, Legislation Committee

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, July 13, 1982

The committee met at 10:09 a.m. in room 151.

MUNICIPAL LICENSING ACT

Consideration of Bill 11, An Act to provide for the Licensing of Businesses by Municipalities.

Mr. Chairman: There is a quorum present. We are dealing with Bill 11, which was referred to us by the House on July 5.

We have attempted to schedule various groups and organizations at their request. The board of trade wish to go first, and we were able to accommodate them. Several organizations have asked to go next week on various days, and in so far as is possible we are also trying to accommodate them.

As you will recall, we are allowing approximately three quarters of an hour, which is contracted or expanded to half an hour or an hour according to the size of the group in front of us in order to average out to roughly three quarters of an hour.

So unless there is anything further to say from any of the committee members, shall we commence?

The first witness is the Board of Trade of Metropolitan Toronto, Messrs. Baird, Scrivener and McCracken. I think one of them is my year, 1960.

Interjection: That long ago?

Mr. Chairman: Yes, I recognize somebody there.

Mr. Epp: Your year where? In Kingston?

Mr. Chairman: Representing the minister is the parliamentary assistant, the member for Wilson Heights (Mr. Rotenberg). All words of wisdom will come from the parliamentary assistant.

Mr. Brandt: --I hope there is going to be a change.

Mr. Epp: By the way, who is the minister, anyway?

Interjections.

Mr. Epp: We have not seen the minister in the House; we have not seen him in committee. Is there really a minister?

Interjection: There is no minister.

Interjection: Is there really a Claude Bennett?

Mr. Chairman: Certainly you will find out by 1985 whether there is or not.

The clerk has handed around a written presentation from the Board of Trade of Metropolitan Toronto. Do you want to make that exhibit 1 for the sake of future reference?

Who is going to be the spokesman for your group? You are saying that from north to south you are Mr. Baird, Mr. Scrivener and Mr. McCracken. Correct the way it is. Mr. McCracken is there in place of Mr. Leach.

Mr. Rotenberg: That is from east to west, Mr. Chairman. I know your directions are a little bit--

Mr. Chairman: All right. I was thinking I was in room 228. I am not even in the right room.

East to west are Messrs. Baird, Scrivener and McCracken.

Mr. Baird: Our submission to the minister was quite brief, and perhaps for the record I will just read it in.

"Dear Mr. Bennett:

"The Board of Trade of Metropolitan Toronto has a keen interest in government measures that affect corporate and commercial affairs as well as the public interest. The board is an association of 16,000 members engaged in commerce and industry and, as such, represents the views of a major cross-section of the business community of Metropolitan Toronto.

"The board would like to express its serious concerns with respect to Bill 11, An Act to provide for the Licensing of Businesses by Municipalities, which was given first reading in the Legislature on March 11, 1982.

"The powers granted to municipalities by the Municipal Act in the areas of the regulation and licensing of businesses are quite detailed and specific as to the types of businesses that may be licensed by a municipality. A review of the relevant sections of the Municipal Act as it exists now indicates that the intent of regulating and licensing bylaws is for the purposes of health, safety, control of noise and other potential nuisances, use of municipal property, the manufacture and transportation of noxious and dangerous substances, morality and the protection of the resident as a consumer.

"By delegating virtually unlimited powers to local municipalities to regulate and license business without any reference to specific areas will result, we believe, in there being widespread differences from one municipality to the next. Within 50 miles of Metropolitan Toronto there are a great number of local municipalities, each of which will have the power to regulate and license businesses with virtually no limit on the type of business that may be regulated.

"This is a concern of the board, as no businessman will be able to determine with any degree of certainty the requirements he must meet in order to carry on business. This will be especially difficult to someone whose business is carried on in a number of different municipalities.

"The board feels that the unfettered discretion granted to local municipalities by Bill 11 will lead to abuses of the powers granted by the bill. We are concerned that the power of local councils will be greatly expanded over that presently existing and may be used for the purpose of increasing the revenue of the municipality by, say, requiring that all business offices be required to have a licence that entails an annual inspection, the actual inspections being merely cursory ones. The \$25 limitation may be circumvented by the establishment of suitably large and expensive bureaucracies to administer licensing.

"While section 3 provides that monopolies are prohibited, the power to limit the number of businesses of a certain type within a municipality remains. It is feared that quasi-monopolistic situations will arise under the guise of licensing bylaws.

"In the same vein, the chances of municipal corruption increase with the amount of power granted to local municipalities in that pressures will be brought to bear on council by various vested interests concerned only with limiting competition and not for any of the proper purposes enumerated above.

"It also occurs to the board that the fee schedule permitting fees equal to the actual cost of carrying out inspections and insurance requirements could be used by a local council as a crypto-zoning tool. For example, there could be a firm carrying on business in contravention of the zoning bylaw which is a legal nonconforming use but which the local council wishes to relocate. By passing a bylaw requiring this particular type of industry to be licensed and to undergo weekly inspections by technical experts could create such a financial burden upon the firm that it would be forced out of business.

"The bill if enacted will repeal section 230 of the Municipal Act. This section exempted wholesalers and a number of related persons from being licensed. It is the board's view that requiring businesses such as bakeries, soft drink beverage companies and dairies which distribute throughout Ontario to be licensed in a large number of municipalities will result in unnecessary and expensive paper work.

"It is apparent from the detail of section 4 that the main thrust of the bill is to regulate body-rub parlours and adult entertainment parlours. We are aware of the concerns municipalities have in dealing with these types of establishments but feel that the enactment of Bill 11 is unnecessary for this purpose. Amendments to the Municipal Act incorporating the provisions regarding body-rub parlours and adult entertainment parlours would achieve the same result.

"It is the board's view that the existing Municipal Act clearly designates the powers that may be exercised by a municipality with the provincial government in a watchdog role. This system is well understood and has withstood the test of time. If so much authority is delegated to local councils, anyone aggrieved by a bylaw passed by a council will have to resort to the costly and time consuming process of the courts.

"Finally, it is the board's view that enactment of this legislation will only create a further layer of regulations that business ought not to have to contend with in order to function.

"The board recommends that the bill not be proceeded with. If desired, representatives of our organization would be pleased to meet with you and your officials to discuss our views."

Now, if I might elaborate on a couple of points that were raised there, it is our feeling that Bill 11 has the potential of causing a great number of problems for business in Ontario. If I might enumerate a couple of items we have thought of since, the delegation of virtually unlimited licensing powers to nearly 800 local municipalities in Ontario without any restrictions on the type of business that may or may not be licensed will, we feel, cause a great deal of difficulty and hardship for already pressed businessmen in Ontario.

It is our feeling that some restrictions or guidelines ought to be given to the municipalities in the form of an amendment to the act to restrain them somewhat in some of their more zealous undertakings. It is our feeling businesses that have never been licensed before will have their already heavy burden of carrying on business increase by the passage of this legislation.

Going back to our feelings about a definition, without reference to the purpose of the existing licensing regulations, i.e., health, welfare, morality, safety and protection of the community, it is our feeling that municipalities may feel they have free rein to license anything they feel is necessary and it is strongly suggested that guidelines be inserted in the bill to prevent the problems we envision.

We feel that basing licence fees on a cost recovery basis will result in many expensive inspections being set up so that the licence fee for some kind of industry could virtually become prohibitive. It is suggested that a ceiling of some sort be established in the legislation.

While there is provision in the act for anyone who is denied a licence to have an appeal to a judge, it is our feeling that the cost of going before the courts is increasing every day and a more workable means of appeal would be appeal to the Ontario Municipal Board.

10:20 a.m.

Mr. MacQuarrie: When you spoke a moment ago of the fees being prohibitive or the prospect of fees being prohibitive, what about the section that limits fees to \$10 or \$25?

Mr. Baird: Except that where inspections are involved, the fees can be on a cost recovery basis.

Mr. MacQuarrie: I was questioning the section in a sense because the amount collected in fees is supposed to equal the amount expended in total by the municipality in its licensing and inspection service. It is pretty hard when a municipality is setting its budget really to judge just how much will be expended in terms of inspections and that sort of thing.

Mr. Baird: It was our fear that, by giving local councils or local municipalities free rein with respect to cost recovery, whereas in the past they have been quite happy to have an annual inspection by somebody or other, they can now build up their bureaucracies and schedule monthly inspections. In the past, one a year was fine but now they could decide to do it once a month by some of their technical experts.

Mr. MacQuarrie: It could be certainly a necessity all right.

Mr. Baird: Essentially, those are our submissions today.

Mr. Breaugh: I have a couple of questions from your brief and then a couple of others that stem from other concerns I have.

In your brief, on the first page, you talk about one of the problems that many of us have thought about. That is, it may well become the rule under this bill that somebody who is trying to operate a business in several different municipalities will be faced with several different sets of rules, possibly several different licence fees and several different inspection processes. Somehow we have to clean up the whole area of municipalities and the licensing process, and accept in principle the idea that a municipality has the right to licence a business.

Do you have any concrete ideas as to how you might get conformity, in terms of how much the licence fee would be, what the inspection process would be and what the rules of the game would be? That is a problem I am having great difficulty sorting out.

I do not have any difficulty with licensing. I know there are a lot of problems out there now with municipalities because they do not have this kind of blanket legislation but, once you move to it, it will be very difficult to establish a code of operation because inherent in the bill is the right of a municipality, not just to license but to do several other things which may give us the dog's breakfast that all of us fear.

Mr. Baird: There is provision in the act for adjoining municipalities to co-operate and co-ordinate their efforts. There is nothing compulsory about that.

Unless a 1,000-page set of regulations were passed saying, "You may impose the following inspection requirements and minimum requirements for motor vehicles, delivery trucks and things such

as that," but something such as that is already adequately covered by the existing transport legislation. I do not know whether local municipalities are going to say all delivery trucks operating in Oakville must be painted bright orange to attract attention, or in Mississauga they are going to say electric green or something like that. I don't know if there is an answer to that.

Mr. Breaugh: Has the board of trade thought about that? The obvious concern I have is that in Etobicoke they could decide they liked taxis and so there are no rules for taxis and the fee is very low. In North York they could decide they did not want taxis, and so the inspection process could be rather intense and perhaps an argument could be made that it should be.

The inspections could be on a regular basis. The cost of getting a licence could be very high. The cost of conforming with the regulations could be very high, and you can very quickly get into an area of absolute stupidity. I am wondering if people who are obviously concerned about this bill would have something in a positive vein to offer the committee in terms of trying to get some fairness and some conformity there.

Mr. Baird: Other than enacting full regulations, virtually going back to the type of legislation you have now, we do not see any way around that. We foresee companies being required to have a licensing department which will just say, "Okay, this vehicle can go through this municipality, but that one cannot," and having horrendous problems.

Mr. Breaugh: In your reading of the bill, if you found the ultimate, stupid situation, do you feel there is any redress for you as it now stands?

Mr. Baird: Only if it were enacted in bad faith or for some improper purpose than perhaps resort to the courts and have it declared invalid.

Mr. Breaugh: Then it is your opinion that if that kind of situation did occur, something that was particularly stupid and galling, your only recourse as a business person would be to get your lawyers and go off to court for a few years?

Mr. Baird: Yes.

Interjection: A long, slow process.

Mr. Breaugh: Not exactly a satisfying thing.

A couple of things caught my eye in this morning's presentation. On the second page you say that, "In the same vein the chances of municipal corruption increase with the amount of power granted to local municipalities..." Will you give me a little bit of background? What the hell do you mean by that?

Mr. Baird: None whatsoever. Absolute power corrupts absolutely.

Mr. Breaugh: So that is kind of a philosophical statement. It has nothing to do with the world as it is.

Mr. Baird: Nothing.

Mr. Breaugh: Okay. You had me worried for a minute.

Mr. Baird: That is why we feel some guidelines ought to be out there. If we could dream up some of the things we dreamt up in half an hour, I am sure 800 municipalities can dream up some doozies.

Mr. Breaugh: On the same page you go on to say that you are concerned about the fee schedule, "permitting fees equal to the actual cost of carrying out inspections and insurance requirements could be used by a local council as a crypto-zoning tool." Have you any indication of any municipalities who have done that?

Mr. Baird: None.

Mr. Breaugh: So again this is just a kind of philosophical--

Mr. Baird: Speculation. This is untried legislation. We just have to try and guess what is the worst thing that could happen and anything in between.

Mr. Breaugh: Let me flip to the other side of the coin then. A number of us in this room have been on municipal councils and we have seen, for example, in zoning and official plan matters and even in things like severance matters where there seems to be a consensus in your community that the public wants that kind of work done. It becomes rather expensive after a while and things like the simple severance, for which I believe the fee is now by law something around \$100, can wind up costing you \$1,000 to \$1,500 in staff time.

Everybody says, as does this province, that it is a good and necessary thing to provide that kind of examination of that, but every time an application comes in the municipality loses \$1,200 and \$1,300. You are business people. You would not stay in business too long if you had a requirement that said, "You must do this and that act is going to cost you \$1,500, but you can only collect \$100."

Are you arguing against the concept that is there or the fear that this might get badly misused?

Mr. Baird: The fear that it might be misused by a buildup of a bureaucracy. Just the idea that we can recover all costs will not encourage the municipality to keep the costs reasonable.

Mr. Breaugh: Is it your argument then that the freedom to do whatever they want with a particular licensing process will lead to some abuse, there being no uplimit on what a municipality

can charge? That they may feel quite free to turn the dogs loose on you and you will have to pay for the cost of the dogs?

Mr. Baird: Yes, that is it pretty well.

Mr. Breaugh: What led you to say in section 4 that the main thrust of the bill is to regulate body-rub and adult entertainment parlours?

Mr. Baird: I think just physically--I do not know what the percentage is, but it looks as though about a quarter of the bill deals with adult entertainment and body-rub parlours.

Mr. Breaugh: One section of 23 sections does. Do you have any understanding or appreciation of the number of other areas of concern by municipalities where they are, in a sense, expected to license now, on some occasions not permitted to license? Do you have an understanding of the broad range of things that are-- This bill covers a good deal more than body-rub and entertainment parlours. It covers the immediate world. I would be a little more fearful of the immediate world rather than that one section.

10:30 a.m.

Let me ask you a question I am going to ask more than one person here. What the hell is an adult entertainment parlour? Is that like the National Ballet of Canada where there is a roomful of adults being entertained? Do you have a definition of it?

Mr. Baird: I think it is defined in the act as best they can--

Mr. Breaugh: That is my problem.

Mr. Baird: --within the grounds of decency.

Mr. Breaugh: I take it your prime thrust then is the regulatory aspect of this thing.

Mr. Baird: Very much so.

Mr. Breaugh: You have great concerns there that this would kind of turn somebody loose out there on an industry. If that is your main problem, would you be prepared to offer some suggestions to the committee, either now or at a later date, to put some fairness in here, to provide something which would solve the problem that I admit the municipalities now have and would offer something which would be acceptable to you?

Mr. Baird: Some kind of guidelines. As I mentioned, the long theory was that the municipalities were empowered to license for the purposes of public safety, health, use of public property, various noises as potential nuisances and morality. If those types of guidelines were inserted in this act, then you would not have the municipalities saying, "Let's license every business office," and require them to have \$10 million in liability insurance just

for the sake of--I do not know what their thinking would be, but it gives them the right to do that.

Mr. Breaugh: There is one thing I had thought of and which I do not see in your brief and I would like to get your reaction to it a little bit. One of my biggest fears is not what is printed in this act, but what is not there, all of the regulations that somebody out there might draft. If they follow the model which is followed here at Queen's Park, they will be drafted in secrecy and the stupidity will only be revealed after there are several victims on the floor.

In your brief, why did you not ask for some occasion to have at least some public access to regulations as they are being drafted, some access to fees as they are being established? That would seem to me to be one of the few tools I can think of which might put some sanity in this process. For example, if municipalities, in drafting regulations and setting up fees, had to consult with people who would be affected by that, hold public hearings, or there was some measure in the process to stop the stupidity before it begins, there is a faint hope of salvation in there.

Mr. Baird: Some of our thinking was that for every time the municipality wants to pass the licensing bylaw, they would have to give public notice the same way this committee advertises its notice. Everyone could come in and examine their bylaws and the businesses to be licensed and be heard rather than on some sunny Tuesday afternoon they have first, second and third reading on their licensing bylaw, that is it, and the next day there is a problem. We advocate provision in the act that public notice be given.

Mr. Breaugh: At a subsequent time, could we get you to give a little bit more thought to that part of it? One of my concerns is the reality of March 19, that the majority of the people sitting around this committee room, bad people as they are, really want this act and they are going to pass the damned thing. Then the rest of the world will have to live with it.

Maybe we could repair some of the damage before it occurs. It would help a little bit if you would give some thought to that process, which I think is an evil and ugly one.

Let me conclude with one other question to you on the matter of ceilings. Traditionally the government has adopted ceilings. It has done more than that, it has set what fees may be charged for a particular kind of licence usually included in the act. Then that does not change until the next uproar occurs at the Association of Municipalities of Ontario meeting or some place where that happens.

I am in general agreement with the position you have taken on the fees. I think it is unreasonable to say that a municipality out there--there is a very large loophole in here. If I am sitting on a municipal council and we do not want any more businesses of any kind, we do not want any more bake shops in our town, we do not have to say no to very many people. We just have to set up a licensing process which is really extensive and it would

forbid them to continue in operation. A number of municipalities have done that. I guess the classic in Ontario is bars, restaurants, lounges and things like that where there are 89 inspectors visiting regularly and there is a constant harassment that flows through that.

10:30 a.m.

Do you have any comments that might resolve this problem for me? I am in agreement: I do not want the licence fee to be used as a punitive measure; I agree with the concept that a municipality ought to be able to recover its actual costs when it goes through this process. But I also see that there is a measure of real unfairness there.

The arguments on the other side of the coin will be quite logical and consistent: they want to inspect these premises more than they have done in the past; they have to protect the public from this, that and the other thing; and there are the actual costs of the licensing.

For example, in my municipality a licence to drive a taxi is \$25, but if you considered the amount of time the police and the staff spent in their investigations, I am sure it would jump to \$100 and in some cases \$300 or \$400. Somewhere in there I have to find a middle ground that makes some sense to all concerned. By putting a ceiling of \$100 or something like that on it I think you would force the municipality to be reasonable in their inspections.

That is pretty simplistic, though, given that on some other occasions the \$100 may be nowhere near my actual costs. What if you did something like set a fee at a reasoned rate and then said that for the municipality to break through that ceiling it has to unveil its costs? That is my concern, really. If this is open and public we can probably live with it, but if it is done in secret and there is no real accounting by a municipality for their actual costs--

I forget what it would be now, but I know we used to take simple things like the council receiving a letter from somebody, and by the time you add in all of the costs of actually publishing that it can get astronomical in a hurry. There are people out there who will give you hell if you raise their taxes and yet they want a copy of the council minutes, which would cost a couple of hundred of bucks to produce. They demand on the one hand their right to have those minutes of the council meeting, and on the other hand if you actually charge anybody for producing those, he is mad as can be. Somewhere in there there has to be some process that we all agree is sane; but I think at the same time that it is a little simplistic to set a dollar limit.

Mr. Baird: I think I would have to listen to what the municipality has to say about what it would like to do and what it would do if it had unlimited recovery powers.

Mr. Breagh: Okay, one final question: Have you or any organization you belong to really been consulted in the process of drafting this bill?

Mr. Baird: No, other than reviewing the legislation and making a submission.

Mr. Epp: Mr. Chairman, I would just tag on to that question. There have been some other bills that have been brought forward by the government. I have one in front of me: Bill 157 was brought forth last year or the year before. Did you have a chance to respond to that bill?

Interjections.

Mr. Baird: No, we did not.

Mr. Rotenberg: Did you receive a copy of it?

Mr. Epp: First reading was on October 29, 1981.

Mr. Baird: As this mass of legislation comes through, the board of trade tries to look at it. I do not think we filed that one.

Mr. McCracken: We may have seen that one, but we did not respond to it.

Mr. Epp: Mr. Baird, what has been your experience with respect to dealing with municipalities? I suppose your dealing with the metropolitan municipalities has been more real in that instance. Is it your impression that they grab too much power when they get the chance to get that power? Is that why you have made some of the statements in your brief that you have?

Mr. Baird: I think because the existing legislation licenses something like 60 big business, and it has been like that for 60 or 70 years, it is a well-settled process that licensing is almost a matter of right for the majority of the businesses licensed. The fear is that, with no limit on the type of businesses they can license, they could take off.

Now, there are nearly 800 local municipalities in Ontario. If only a small percentage of them decide to license everything in sight, just walk up and down the street and say, "Okay, we have 300 businesses in the municipality and we are going to license them all," I think it will create a hardship, and there would be no real reason for licensing the vast majority of the businesses under the existing philosophy of the licensing power.

10:40 a.m.

Mr. Epp: A municipality has certain licensing powers now.

Mr. Baird: Yes.

Mr. Epp: You reacted to some of the things that have been proposed. It is my impression that you are over-reacting to what is being proposed. Obviously, you would take exception to that. It is my feeling that you are over-reacting. I do not quite

see the danger in the bill that you see in it. How do you react to that?

Mr. Baird: I do not think you can predict how the municipalities are going to handle this legislation, and that is our fear. Once it is in place it is in place; it is not going to be repealed.

Mr. Epp: Is your greatest argument the fact that you are going to have 838 different licensing bodies in the province?

Mr. Baird: Potentially.

Mr. Epp: If the province controls it are you going to have greater input with the province than you would with the municipalities?

Mr. Baird: No, but--

Mr. Epp: Certainly the municipalities seem to be closer to the grass roots and more responsive--

Mr. Baird: I think the philosophy behind the act is to give the municipalities the powers they seek, but without any guidelines we have to trust that the municipalities will be reasonable over the next 50 or 60 years.

Mr. Epp: Would you not be more accessible to the municipalities, to the change of the needs there? If you try to get provincial legislation and regulation changed, it takes a lot more work, effort and time than I would think it takes for a change in the municipal legislation.

Mr. Baird: We feel that--

Mr. Epp: Even as big as municipalities like Metropolitan Toronto.

Mr. Baird: The granting of the unlimited power is the big question mark.

Mr. Epp: But that unlimited power is with the province right now. The province has a lot of unlimited powers.

Mr. Baird: That is true. Now they are delegating all of it to the municipalities. Where you have one Queen's Park you will have 800 municipalities with the same power. You are going to have the potential of a patchwork system of licensing throughout the province, where something or other requires a licence and an inspection system whereas the very next municipality does not have a licence or has less strict requirements or requirements that are impossible to match up.

Mr. Epp: Mr. Baird, I guess you conclude by saying you would like the bill withdrawn.

Mr. Baird: I think at this stage--

Mr. Epp: I would think that the bill is not going to be withdrawn, because it has been proposed time and time again. It is before us, and it will go through in some amended form, I would expect.

What are your major concerns? What would you amend in order to make it favourable as far as the board of trade is concerned?

Mr. Baird: Some kind of definition or guidelines to municipalities as to what they can license. It does not have to be detailed as to the types of business, but I think the municipality would have to be accountable to show that when it passes a bylaw to license a business it has to fall within guidelines of morality, public safety, health, things like that.

I also feel that public hearings be held in the municipalities before the bylaw is put before council for a vote so that public input can be had rather than just at the council meeting. We feel that a ceiling on the fees would prevent abuses, and I think we also feel that an appeal procedure to the Ontario Municipal Board would be more efficient than an appeal procedure to a judge.

Mr. Epp: Rather than have a flat ceiling on the amount of your fee where an inspection takes place, is there some other formula that can be used that is a little more acceptable--say \$100, or maybe it could be \$200 or something of this nature? If you say a maximum of \$500 the municipalities may charge--

Mr. Baird: No trouble getting to it.

Mr. Epp: That is right. Is there some other formula that can be employed?

Mr. Baird: Not that I have thought of. I do not know whether my friends have or not.

Mr. Epp: They have been very silent during your presentation.

Mr. Baird: Yes; they may have something to say.

Mr. Scrivener: I think you are into a situation where if you set a fixed fee you obviously have to adjust it on a regular basis. That point was made in one of the earlier meetings. As the cost of the administration increases, it would be reasonable to increase it, or you would have to start setting some kind of cost plus mechanisms and that is into the area of its being up to the municipal authorities to decide which is more reasonable.

If I can just make a point here: a lot has been said about the amount of the fee. From the point of some businesses I do not think the main concern would be the dollar figure because the fees, give or take, are not in the \$50,000 area. I think the bigger concern would be the added administrative uncertainty, frustration, delays, which could have a very negative impact on many businesses, in fact, if the licence were not granted, a much greater impact than paying \$50 versus \$100, etc., for the licence.

From some companies' standpoint the concern is not whether the fee is \$100 or \$200, but how do you go about getting the licence and has the whole process become even more complex than it is today. The imposition of an added layer of administrative complexities on top of what is already, for many businesses, a difficult situation in difficult economic times, is something that seems a step in the wrong direction from the standpoint of businesses trying to do business right across the province.

If a business is only operating in Stoney Creek it is one thing. If they are operating in Stoney Creek and Windsor and Cornwall, etc., and if their regulations are different in each municipality with respect to equipment, with respect to hours, with respect to all kinds of things, it does mean an added burden, an uncertainty. It is the uncertainty behind this whole bill that I think bothers business. We have to put up what appear to be straw men as concerns, but they are hypothetical at this point. A year from now they might be real.

Mr. Brandt: Mr. Chairman, could I ask a supplementary on that response? With respect to the issuance of licences, in reality the very problem that you seem to think might occur with respect to this particular bill could be occurring at the moment. Mr. Epp and myself, along with others, have sat on municipal councils. I know of not one case, sir, where a municipality has in fact caused a business any concern as a result of any delay in issuing a licence.

I am wondering what would make you say that in the future that kind of thing might well happen, when in past history, with what have been reasonably similar ground rules, there is certain evidence that that is not the way municipalities behave. Councils are also responsive to the kind of input you might have if there was something extraordinarily difficult about their process. There is an immediacy to the kind of contact that you can have with them.

As Mr. Epp was saying earlier, they are much closer than Queen's Park and the provincial government, and quite likely would be very responsive to any concerns that you have. Normally, they are interested in seeing business thrive and foster in their own communities; that is part of their role. I am not suggesting that you are attacking them but there seems to be a thread of concern there, that there is no evidence to support, that that kind of thing has gone on in the past.

10:50 a.m.

Mr. Scrivener: Just backing up a step: there is not a concern with the objectives behind this bill, merely an attempt to appreciate where the negatives could arise from a business standpoint. While it is true that municipalities tend to be very anxious to further the wellbeing of their community in business matters, it could be very awkward for a company to be dealing with a multitude of municipalities if problems of this kind did arise.

In theory, one is talking about dealing with one municipality. There is no question a given municipality knows its

area better than the provincial government, but when you are dealing with 800 of these municipalities and you have a variety of different problems coming up, in theory at least it can be very complicated for the average business to deal with this. Even a very large company may not have the resources to conduct those kinds of matters.

I bow to your knowledge of municipal affairs. I am simply looking at it from the standpoint of the businessman.

Mr. Brandt: I can see where that would be a problem. That is not, really, exactly what I was addressing. The problem of inconsistency among a number of municipalities, particularly in a relatively narrow geographic area, would cause some difficulty.

Let me raise a question with you--if Mr. Epp has finished--and this is in regard to the itinerant sales operations that float usually from out of Metro Toronto and move to other smaller municipalities around the province--the type of operation that sells carpets, Hong Kong suits, Royal Doulton on occasion, if they buy it at a bankruptcy sale. They move frequently into hotel operations, motels, sometimes empty store fronts for a matter of days. I think the legitimate businessman really and truly wants that kind of fast-buck operator controlled in some way.

Municipalities have no consistency with respect to the way in which they are handling them. Some have relatively high, prohibitive fees for them to come in--which I, by the way, happen to support--and others charge a very nominal fee, allowing this kind of thing to go on at great expense to legitimate, existing business people who have a stake into the community that goes, in my view, far beyond what licences ask for. I say that because they contribute to the Girl Guides, the Scouts and the local organizations and are in the community in a very real sense.

Mr. Breithaupt: They even pay taxes.

Mr. Brandt: They pay taxes as well.

The point I wanted to ask you about is what would you suggest would be an appropriate mechanism for controlling, from a business perspective--and I address the question to anyone who might want to respond to it--an appropriate mechanism to control that kind of activity when you are not trying to prohibit trade or be restrictive, but by the same token you do not want these--I call them itinerant but maybe a better term could be used--these floating sales operations which are coming in with the express purpose of skimming a particular segment of the market to the extent that they can, and then running out of town?

There are art shops that do the same thing. There is a whole myriad of these kinds of operations that are highly mobile. In many instances they are irresponsible; not all of them by any stretch of the imagination. What would you do to control those operations without infringing on a legitimate private business operation?

Mr. Mitchell: The whole thing of itinerant salesmen.

Mr. Scrivener: Are all itinerant salesmen bad?

Mr. Brandt: I did not say that. That is not what I am asking as a supplementary.

Mr. Scrivener: I personally have given a lot of thought to the situation of the itinerant salesman, perhaps not as much as some of the people who put together the legislation, but I do not have an automatic answer to that. I am sure there are some salesmen who move from town to town who we could all agree are quite legitimate and, in fact, add to the wellbeing of those communities. I honestly do not have a quick answer to your question.

Mr. Breaugh: I guess to give you a concrete example that you may be able to deal with a little better: how about the guy who comes into Oshawa to the Holiday Inn for the weekend and has a fantastic sale on leather coats? That person is operating at a time and in a place where normal business could not and does not. If I buy a leather coat and it is not as high a quality as I was led to believe, I cannot take it back to that store because that store is not there Monday morning. Those guys are long gone.

Let us hear your comments on that. Are you supportive of their right to have free, unrestricted trade, come into a community to set up shop for a short period of time and then to vanish into the night? They may or may not be selling decent goods. I do not know. I have heard there are a lot of those itinerant sales people around who operate after regular store hours and can give a good price on a lot of items which most of us would think is not quite legal.

Mr. Baird: I would expect most of the operators you describe would not bother getting a licence if there was a licence.

Mr. Breaugh: That's right.

Mr. Baird: If they were caught, they would be issued a summons. If they appeared in court at all, they would be given a slap on the wrist, not the \$10,000 maximum.

Mr. MacDonald: Mr. Chairman, If I can have a supplementary comment, perhaps there is a question involved in it. In an earlier committee this year, we were considering a Toronto bill in which they were seeking extended licensing powers to cope with precisely this kind of problem, and not necessarily the fly by night itinerant, the flower pedlar who moves from place to place throughout the city.

Interestingly enough, apart from a desire to establish a more orderly approach, the pressure was coming from the businessmen to have licensing so the whole thrust of your presentation this morning is an interesting contradiction of a lot of experience we have had here of businessmen who say: "This is a bit disorderly. We are being subjected to unfair competition. We"--as was suggested a moment ago--"are part of the community. We

play our role as good corporate citizens and yet we are having our business taken away in an unlicensed fashion."

So they were seeking licensing powers. I think you have to sort of sit down and reconcile that with the basic thrust of your whole approach.

Mr. Scrivener: I think it is very consistent because in both cases business is seeking to defend its wellbeing.

Mr. Breaugh: How about your attitude towards street vendors in general? One of the ironies I see is you can walk along any of the major streets in Toronto and just behind the sidewalk is someone who is paying top dollar for his retail space, probably subject to a whole lot of regulations about signs and hours of operation and all that, and in front of there is somebody with a suitcase, selling jewellery or whatever.

It is a fine downtown Toronto location with one guy on the street and one guy inside. What is your response to that? Should we allow municipalities to say, "You cannot have street vendors, the guys who sell popcorn should be licensed and the people who sell jewellery on Yonge Street should not be there," all of that?

Mr. Baird: I thought they were all occupying public property and they could be ejected at any time.

Mr. Breaugh: Do you contend they have a right to free trade on the street?

Mr. Baird: No, I do not think they have that automatic right.

Mr. Breaugh: I would have thought the bastion of free enterprise would support their right to conduct their business in the open marketplace. It is a very traditional concept of free enterprise to set up a stall and do business.

Mr. Brandt: As long as they accept the responsibilities that go with free enterprise.

Mr. Breaugh: They have very low overhead with those.

Mr. Brandt: It is a double-edged sword. Are you saying in response to my question that you really have no comment about that kind of regulatory activity in connection with this bill? Do you have any strong feeling about the kinds of mechanisms that should be built into it to control that sort of activity which I think strikes at the very heart of free enterprise?

These are people who are outside the sort of free enterprise system and are taking advantage of it by breaking the rules. I really believe they are, the vast majority, the ones who are selling the leather coats or the ones who are selling the rugs or the Hong Kong suits or the art. I can think of a number of different types of that.

I will give you a prime example; the one who comes in at the peak of the season in the toy business. Ninety per cent of all toys are sold in the months of November and December, two months of the year. You have operators who have to carry an overhead for a 12-month period.

The toy operator who wants simply to load up a truck in Toronto at the local toy manufacturing operation and scoot off to Parry Sound, to my colleague's riding, and set up in an empty store for two months can do that because that is the only time toys are sold, by and large. In my view, he is operating not only highly unethically but I would say it is borderline in terms of its legality as well.

11 a.m.

I would like to see us strengthen that kind of regulatory power within the bill so we almost prohibit that sort of thing or make it expensive enough that, if they do come in, they have to pay the same price as everybody else pays to do business, that is, we are all playing by the same ground rules. Do you agree or disagree?

Mr. Scrivener: You are talking about licensing?

Mr. Brandt: A form of licensing, yes; I am talking something probably in the order of \$500 for that kind of an operator. If he wants to come in for a day, let him pay the 500 bucks. Then the municipality has at least some money with which to pay its bills after this operator leaves town. It does not help the business. It is hit by it directly but it may encourage them not to come in and perhaps to go elsewhere to another province.

Mr. Breaugh: In other words, it is prohibited.

Mr. Brandt: Just about.

Mr. Rotenberg: Mr. Chairman, if I may just interrupt, there is a thing in the Municipal Act called transient traders which Mr. Brandt has just described, where a person comes in and sets up a business in a store for a short period of time. That transient trader section is being left in the Municipal Act and there is a \$500 fee for that.

It is something we feel is different from the ordinary licence. He is actually coming in and setting up a business and that, as I say, remains in the Municipal Act in a separate section. That section is not being repealed.

Mr. Breithaupt: Have you considered though at this point, Mr. Rotenberg, whether that \$500 figure continues to be a reasonable and relevant one since we are discussing this issue at the moment? Are you content with that figure or is it time it too was reconsidered?

Mr. Rotenberg: We are dealing now with Bill 11. Having left that in the Municipal Act, we really have not gone into that in detail except to say it should be left in the Municipal Act and

possibly, if the committee so desires, that should be reviewed in our next review of the Municipal Act but it is not part of Bill 11.

Mr. Breithaupt: I recognize that. However, we were talking about the general theme and I think from the discussions and what a number of members have said about this sale procedure over several days which can remove from the store next door what a large proportion of its business might be, that this is perhaps a point your advisers should consider since it is one I am sure a lot of established merchants within a community feel is worthy of reconsideration.

Mr. Mitchell: A number of municipalities do not feel the deterrent is there or that the municipalities really have sufficient controls, notwithstanding it being under the Municipal Act. The itinerants, or whatever you wish to call them, have been a concern of a great many municipalities for many years.

I think a lot of them would tell you they really do not feel there is sufficient deterrent or area of control for them to be able to ensure that everything that is done at those one-day, two-day or three-day sales--that they have the right sufficiently to monitor them and make sure what is being offered for sale, to go back to Mike's point, is in fact what is being sold.

Mr. Rotenberg: There is a difference in definition between the transient trader, who is what Mr. Brandt has described as someone who comes in, takes an vacant store and opens up as a business for a short or long period of time, and the itinerant salesman who just sort of comes into a municipality and goes door to door and sells. There is a different class but--

Mr. Breithaupt: You have also got a third group surely and that is the chap who comes in, as was mentioned by Mr. Breagh, and goes to the Holiday Inn with his load of coats. He is not renting store premises. He is not going from door to door. He seems to be in a third category.

How is that now being considered by the ministry since it appears to be a new kind of thing and I am just wondering if that is being adequately covered--

Mr. MacQuarrie: That may be a transient trader.

Mr. Breithaupt: I don't know.

Mr. Rotenberg: According to our legal advice, at the moment he would not be a transient trader. He would be more of the itinerant salesman type of person because he does not actually open a store and a business. He would come under Bill 11. There has not been very much complaint, request or fuss about these kind of things, as Mr. Brandt has mentioned, from municipalities and others. That is why we have not had that much of a reaction to it.

One of the advantages of these committee hearings, and we agree on all these matters, is that this has now been drawn to our attention by several members who have been former municipal politicians and who feel perhaps there is more of a problem out

there with these transient traders than the ministry is aware of.

As such, I would say to Mr. Breithaupt, yes, we will have another look at it, not within Bill 11, but in the context of our ongoing reviews of the act. When you get to the type of person Mr. Breaugh mentioned, who does come under Bill 11, as we go along we may have to have a look at that when we get to clause by clause in those sections in this bill that are relevant to that.

Mr. Breithaupt: I suppose any pressures in this area come in response to somewhat more difficult economic times where there is the consumer's desire, without question, to obtain as low a price as possible for the leather coat which was used as an example. On the other hand, the lack of those sales to the store next door is more of a burden because of the loss to a business that still has to pay taxes and live in the community.

Mr. Rotenberg: The thrust of the philosophy of this whole municipal licensing--and I will probably get into this in much more detail when we discuss the bill--is not to prevent the new person coming into the municipality as against the person who is part of the community, but to make sure anyone who is in business, that we know who they are, their registration, their financial responsibility and that there is some recourse to the public that guarantees it will know where to find the person who, as Mr. Breaugh says, is long gone.

The purpose of licensing is so that we know who they are, know they are responsible people and know that the public has recourse. That is really what we are looking for, far more than trying to keep them out and giving the local merchants some form of monopoly or restrictive competition: just some form of licensing.

The point has been raised. Possibly as we get into the details--which really is the thrust of the board of trade this morning--as we get into the details of those things, I think we should have a good look at them.

Mr. Breaugh: Could I ask a question?

Mr. Chairman: No. Mr. MacQuarrie has taken three supplementaries ahead of you.

Mr. MacQuarrie: I was just wondering whether we are creating a bit of a bogymen here about the possibility of abuse of licensing powers by municipalities. At the present time, municipalities and boards of commissioners of police have fairly extensive licensing jurisdiction. Have you had any indication at all that this is being abused?

Mr. Baird: No. It has been abused in the past. There are 70 years of court cases saying anywhere from \$100 licence fee in the 1930s to sell tobacco was, in effect, prohibitive, to upholding a Saskatchewan bylaw that says they could license any business and license law offices, dentists and doctors.

Mr. MacQuarrie: And surplus industries generally.

Are we not in a situation where municipalities are rather solicitous of their business communities, particularly the established businesses which are paying business tax, which are really part of the whole fibre of the community? Then there is the other class of business we have referred to: the itinerant who moves in, the chip wagons that many municipalities have had trouble with, parking beside a high-class restaurant.

One of the things I wonder if the bill covers is travelling shows. For instance, if a municipality is stuck with a performance by the Rolling Stones or the Eagles or some similar group in one of its places of amusement, and the demands this places on a municipality's police, fire department and a whole range of municipal services including improving roadways and the rest of it, what does a municipality do in a situation like that? How do they control this sort of thing?

11:10 a.m.

Mr. Baird: You spoke first of all about chip wagons and things like that. I think there is existing legislation to prevent the conducting of business on public roadways and thoroughfares.

Mr. MacQuarrie: I realize that: but if they park on a private lot where they rent space?

Mr. Rotenberg: Are you talking about rides and that sort of thing?

Mr. MacQuarrie: The next thing I was coming to was the travelling shows with Ferris wheels and the rest of it, the licensing of those.

Mr. Baird: I think they have been licensing travelling circuses and things like that all along without too much trouble.

Mr. MacQuarrie: And supervision. I am just wondering if the act is broad enough to cover the travelling show. It has been my experience with municipalities and municipal councils in their treatment of business that they have been pretty fair and reasonable, by and large, in their licensing. I rather suspect this fear of abuse is perhaps more imaginary than real.

Mr. Baird: The existing act specifies the types of businesses that can be licensed. They have been doing that for 60 years. If you virtually turn them loose there is no predicting what will happen--that is our fear--without any guidelines.

Mr. MacQuarrie: You do not feel that municipal councils would act responsibly under the circumstances?

Mr. Baird: There have been some strange bylaws proposed in various areas.

Mr. MacQuarrie: I realize that. Sometimes peculiar diseases need peculiar cures.

Mr. Breaugh: I just wanted to get the board of trade's

comments on another phenomenon which is growing and goes by various names: yard sales, garage sales, flea markets. As you go through that process, I am seeing a new phenomenon. Every Sunday in Oshawa there are now three or four new shopping centres, all open, all competing regularly with ordinary businesses that are there. I wonder what your position is on that.

Particularly, to get a little closer to your bailiwick, the Sheridan Mall in Pickering is a suburban shopping mall like many around Metropolitan Toronto. I would say it does more business on a Sunday from people who move in for a one-day operation.

I have not been in there for about a year but I have been by it regularly and there are certainly more cars in the parking lot and larger crowds there on a Sunday doing business with stalls that are rented inside the shopping centre, selling much the same goods as people who rent the stores the other six days of the week. Does the board of trade have any opinion on that kind of operation?

Mr. Baird: I think if it is a traditional flea-market type of thing then it is a novelty, really, and I do not think there is any--

Mr. Breaugh: The distinction is being made between somebody having a yard sale or a charitable group running their annual flea market, and what is now becoming a regular business operation every Sunday; that is, a suburban shopping centre renting space and much the same people coming back Sunday after Sunday. I do not know what the rates are now, but I believe at one time it was \$15 to set up a stall in there.

I have not heard what the people who operate the regular businesses in there feel about this kind of operation and I wonder if the board of trade has ever thought about that.

Certainly if it was costing me \$1,500 or \$1,600 a month in Yorkdale to run a shoe store and every Sunday afternoon somebody could come in for \$10 and set up some kind of shoe operation in a stall in front of my store, I might have some strong feelings about that. But I have never heard any chamber of commerce, board of trade or retailer take a position on that. Have you ever considered that?

Mr. Baird: To my knowledge, I do not think a member of the board has approached the board to make representations on behalf of the matter.

Mr. Breaugh: So you have no concerns about that?

Mr. Rotenberg: You missed the point. Most people now can be licensed by the municipality under the hawkers and pedlars section.

Mr. Breaugh: I understand.

Mr. Rotenberg: The new act takes out a lot of

exemptions. It makes it easier for the municipality to licence those people.

Mr. Breaugh: The position I am trying to get at here is that if the board of trade opposes the various regulations which might stem from this act, obviously, one of the trade-offs in it might be some fairness for the people that they represent--some kind of what we have just been dealing with. Such as, what do you do with operators that do not function in a normal business manner, who might be a bit unorthodox?

Surely, at some point under this bill there will be some municipalities saying: "We want to license retail sales outlets, and these are the rules of the game. We want to protect our local merchants, so we want to exclude people who come in on Sunday and run a one-day operation, or people who go to a hotel and run a two-day or three-day operation, so we will make prohibitive fees in that regard."

That is part of the problem, if we are looking for some middle ground here or some fairness, or some common pieces of interest here, we should try to consider some of these things.

Mr. Baird: My initial reaction is it would be a very unwieldy type of thing to police and define.

Mr. Rotenberg: Mr. Chairman, Mr. Breaugh raised an interesting point, and a number of these points that have been raised are not so much licensing but whether or not these businesses are legitimate within a municipality. It is the feeling of the ministry that in most of these cases, as in the case of a flea market, a municipality can handle them by zoning, if it wishes. In a zoning bylaw, a municipality can prohibit temporary sales on shopping centre parking lots, as an example.

There was a problem of licensing out there and Bill 11 should not be looked at as the way to solve a number of problems which really come under other forms of legislation. A municipality has other avenues to solve them.

Fortunately or unfortunately, licensing has always been a much simpler way to get at a thing because a licensing bylaw simply is a one-shot deal in a council, up until now. Whereas in the Planning Act you have a whole process to go through. We do feel that many of the things we talk about, such as some part of the regulation of video games which will come before us later on in these sessions, could be handled by zoning, they should not be done though licensing.

Mr. Breaugh: But in the example which I quoted, the problem is that there is a shopping centre, clearly properly zoned for retail sales, and there are two levels of operation at it. One is the normal retail sales outlet and the other is a temporary, probably smaller in size, sales operation. The difficulty I am seeing there is that has expanded in scope far beyond what anybody ever thought of when a few years ago they talked about flea markets.

When one looks at the operators one sees a mix in there. You see people who are running a regular business every Sunday, and that is how they make their income.

Mr. Rotenberg: My point is that if the municipality so desires, it can get at those people through zoning, just as well as the total amount of floor space--

Mr. Breaugh: How?

Mr. Rotenberg: Require that retail operations in shopping centres be indoors.

Mr. Breaugh: It is indoors.

Mr. Rotenberg: They have the restriction of total amount of gross floor area, that the corridors are not to be used for sales. They can restrict retail sales in the corridors. They can restrict temporary operations.

Mr. Breaugh: Then your regular merchants could not have their sidewalk sales.

Mr. Rotenberg: What I am saying is, without getting into details, there are ways within the Planning Act, if a municipality wanted to get at those situations. Maybe you have to be a little inventive, or a genius, but the Planning Act does cover those situations. I am trying to say they must have a licence.

In our opinion, licensing should not be used as a way to restrict certain businesses. There are other ways in other parts of the municipal legislation to restrict businesses. There are other controls.

Mr. Breaugh: I thought that one of the main portions of this bill was to provide municipalities--we all fool around with these words about it being okay to regulate but not prohibit; Mr. Brandt said that he wanted a fee in certain instances which would be just about prohibitive. The thrust of the bill is to allow a municipality to control, to regulate, and in some instances, prohibit--or, if you want to be wishy-washy about it, nearly prohibit--certain types of businesses. That is pretty restrictive in nature. Can we get some concept of what we are really doing with the bill here?

Mr. Rotenberg: As I say, the thrust of the bill, with three exceptions, which are taxis, body rubs, and entertainment parlours, is not to be prohibitive or not to allow fees to be restrictive, and not to allow to use the licensing for anything other than to register, regulate, and to indicate health, safety, and certain regulations are followed; and there is financial responsibility. That is the insurance provision.

11:20 a.m.

Mr. Breaugh: That is a little hard to swallow when you go through the explanatory notes. Virtually every single one of

them in some way inhibits, restricts, regulates, or just about prohibits. The wording of the bill--

Mr. Rotenberg: The thrust of the licensing legislation is not to give a municipality the power to prohibit any class of business, or to prohibit any number within a class, that is, to give a monopoly--

Mr. Breaugh: If you look at explanatory note 2(a), it is pretty straightforward: "the power to prohibit the carrying on of a business without a licence." In other words, unless you conform to what we deem to be the necessary licence requirements, you are out of business; prohibit, that is pretty straightforward.

Mr. Rotenberg: The licensing bylaw cannot be prohibitory. In other words, any business that meets the qualifications can operate within the municipality. You cannot use licensing to prohibit business. You cannot say, "We will not issue licences for bake shops, and therefore, there will be no bake shops in the community." You cannot do that. You can say a bake shop must have a licence.

Mr. Breaugh: And the licence fee is \$2,000.

Mr. Rotenberg: You cannot do that either. The act says that the licensing fee is--we sometimes get into a discussion of what the board of trade has raised in so far as making its case clear, but that also is not allowed within the philosophy of the act.

Mr. Breaugh: I am going to stop because I am getting too close to the board of trade for comfort.

Mr. Breithaupt: At least that's their view.

Mr. Chairman: Are there any other questions of our witnesses?

Mr. Mitchell: Not of the witnesses but to Mr. Rotenberg. I have gone through this bill two or three times. There is a side question, but a concern that some municipalities have had over the past number of years which deals with the service station industry, and the fact that under existing legislation--I was looking in here because there is a paragraph which might be applicable--they have been unable to differentiate between gas bars and service stations, and so on.

Is there any proposed legislation anywhere which would allow the municipalities that power?

Mr. Rotenberg: Again, there is nothing in the licensing act. They can define a gas bar and they can define a service station. They can have different licensing regulations for those, within the act.

Mr. Mitchell: Whoops--come again; come back again.

Mr. Rotenberg: Under licensing, a municipality could

license service stations and license gas bars, and they could have two different kinds of licences: one for gas bars and one for service stations. They could have, if they are reasonable regulations; they might be slightly different for gas bars and service stations. But, within the licensing, they could not try to prohibit gas bars from municipalities to protect the service stations. That is the thrust of what some people are getting at.

Mr. Mitchell: Let's deal with a specific. The municipality I represent, at one point got concerned about the number of wholesale conversions, and they also got concerned about an oil company that was coming in and making arrangements to put three or four pumps in the parking lot of a shopping centre. That sort of operation really contributes nothing to the municipality in comparison to the guy who runs a six-bay garage along with the gas pumps.

When they examined how they could control, they found that to some degree, they could exercise control on site plan approvals when they said, "All right, we will allow this conversion, but the service bays must remain in another area of control." But they found the only way they could really create any limitation was by saying, "We will restrict the number of gas stations," or gas outlets, "in our municipality to a specific number."

The number of conversions have been creating a concern for some municipalities. I have a concern of my own of the conversions that are existing or occurring throughout the province, in that we are taking the word "service" out of "service station."

All I am saying is, I do not see any control in here for the municipalities which is something one they have been looking for. In your ministry's ongoing work, is there any work being done to try to answer that concern of municipalities?

Mr. Rotenberg: First, Mr. Mitchell is correct. There is no control within the licensing bill because, as I say, licensing does not allow municipalities to prohibit a kind of business.

Mr. Mitchell: Fine, I buy that.

Mr. Rotenberg: But within the Planning Act and under zoning bylaws municipalities can set up qualifications, regulations for gasoline stations or gas outlets and so on, not by numbers but, by regulations and by zoning bylaw could, if they can pass a bylaw and get it through the Ontario Municipal Board--

Mr. Mitchell: Yes, but that does nothing for conversions.

Mr. Rotenberg: Conversion in what way?

Mr. Mitchell: From a full service to a gas bar operation and the--

Mr. Rotenberg: They may be able to by requiring any person who pumps gas to have a minimum amount of service. They could put something like that in the zoning bylaw.

Mr. Mitchell: Perhaps, Mr. Rotenberg, leaving that aside, you might be able to give me some--if there have been some changes, I would appreciate being made aware of them.

Mr. Rotenberg: Within the present Planning Act and the proposed Planning Act, and some of the members here sat on our review all spring, municipalities have a lot more power in the Planning Act than sometimes they want to exercise.

Mr. Mitchell: I would tend to disagree with you. At this time I would appreciate being proven to be wrong.

Mr. MacDonald: I do not know what their power was, but they have had that power for a long time. I have a vivid recollection of visiting Elliot Lake in the early days and being given a tour of the city by the chairman of the chamber of commerce who pridefully pointed out that they had specified where gas stations could be. They could not emerge everywhere.

Mr. Mitchell: No, they can do that, but gas station does not split up gas bar versus gas station, that is my point.

Mr. Rotenberg: They can in the Planning Act have two different definitions.

Mr. Mitchell: I disagree with you. They can identify gas stations. They can say, "It can go in here under the zoning," but I do not think they can prohibit in any way, shape or form under any existing legislation--we are getting away off the subject; if you would look into that for me.

Mr. MacDonald: I have a general question I would like to put to our witnesses. I suspect you will have detected that there is a feeling in the committee--Mr. MacQuarrie put it that you are exaggerating, you are creating a bogey. Mr. Epp put it that you have over-reacted. Your basic recommendation in the final paragraph is the bill should not be proceeded with.

Since it is likely to be proceeded with, what are the precautions to forestall this abuse? You referred to guidelines. Those guidelines are there and have been exercised in terms of reference to purposes of health, safety, control of noise, etc. Have you attempted to set down a new guideline that would cover it?

Mr. Baird: I think an expansion of the existing guidelines would be adequate and call the municipality to account for how it arrived at this as being either for the purposes of health, safety--

Mr. MacDonald: As a layman, I would be curious to know what legal advice you have, what phraseology you would use so that it would be--

Mr. Baird: I am a long way from being a draftsman of legislation, but I think it could be achieved with an adequate preamble.

Mr. MacDonald: Apart from an adequate guideline that you

at the moment hesitate to sort of give us any guidelines as to what it would be, do you think the emphasis that Mike Breagh was putting on opening up the process so that, any time there is going to be a licensing, there would have to be hearings in advance or any time there was going to be regulations?

Mr. Baird: We support that.

Mr. MacDonald: Quite frankly, I am inclined to agree with Mr. MacQuarrie. I have never been on a municipal council, but in my observation they hesitate to get into situations in which they are going to create flak out in the community by undue regulation. They are subject to pressures to avoid that. Therefore, I think you are exaggerating the extent to which there would be the abuse, but surely that could be coped with by opening up the process so there would be full opportunity for voicing views in advance, before--to borrow Mr. Breagh's phraseology--this insanity is imposed.

Mr. Baird: We are agreeable to that. I think we support that very much.

Mr. Scrivener: With some appeal afterwards perhaps.

Mr. Breagh: How do you feel about having the appeal going back to the same council that did it to you in the first place?

Mr. Baird: I think there has to be an outside appeal.

Mr. MacDonald: McRuer would protest that is the only appeal.

11:30 a.m.

Mr. Breagh: That is one of the provisions in the act, although you can get around it, but it does strike me that there is a basic problem there. A municipal council will set the regulations, grant the licence and then, if there is an objection to it, go back to council.

It could subsequently go to court. There are probably a couple of other ways you could deal with it, but the basic operation is at one level. It starts, is adjudicated and stops with the municipal council. I am not quite sure municipal councils are really equipped to do many of the things this bill asks them to do.

Mr. Baird: We would be happier to see the Ontario Municipal Board involved in the appeal procedure.

Mr. Breagh: That would be your option?

Mr. Baird: Yes.

Mr. Breagh: I understand the government's position was to make this as practical as possible, and probably that is to say that, if the council in Timmins refuses to grant someone a licence

or sets a prohibitive fee, it is probably easier for some guy running a chip truck in Timmins to go down to city hall and talk to people there, so there is that measure of practicality in what is being proposed here. It is also somewhat parallel to, if you go to court and the judge sentences you to 20 years, your appeal system is to go back to that same judge the following week and see if he still feels the same way. I would not be too happy about that.

Mr. Baird: No, but if you had a series of public hearings and say the municipality proceeded with it, there would still be a procedure to attack the bylaw or attack the refusal of the licence by going to the Ontario Municipal Board.

Mr. Rotenberg: I just want to make a brief comment. The thrust of the board of trade's brief seems to be that we should not be giving too much power to municipal councils because they have a little apprehension the power may be abused. They have made some other comments about the way the act is written. They are playing the devil's advocate which I understand they should be. There is a bit of fear of the unknown with all this new power going to municipalities.

I would point out that the municipalities have had a lot of this power for many years. There is some 60 sections in the Municipal Act which allows them to license all sorts of things and the vast majority of municipalities take advantage of very few of the sections for which they have the power. The regulatory power of municipalities under the present Municipal Act is far greater and has been somewhat restricted within the act we have before us.

However, the board of trade brief is certainly not without merit because there is an apprehension that maybe the definition of the allowance to license everything in sight, maybe there is a point. I think we are going to have to reconsider. Whereas we want the municipalities to have the power to license businesses that deal with the public and so on without having to have 60 sections of the act, some of the points they make may have some merit.

The other point which maybe has some merit, because the act was not written the way they interpret it, and that is the cost recovery section because the cost recovery is the cost of administering and enforcing. Administration includes the cost of the clerk issuing the licence plus the cost of whatever initial inspection has to be made.

Enforcing, the way I read it, and a lot of other lawyers probably read it differently, is that somebody has done something wrong or there is some complaint and you send either the bylaw inspector of the police or someone out to enforce the bylaw.

What they have in between is sending the inspector into the bake shop or into General Motors or somewhere else every week to inspect to make sure that things are going well. That was never contemplated in the act. I do not think it is either administration or enforcement. It is something a little different. It may even be more like harassment.

If we on reviewing it, or other lawyers, feel the municipalities have the power to go and inspect every week and charge for it, that is not the intention and possibly there has to be some modification or change within the act to make sure that does not happen, because it was never contemplated that a municipality could built up costs by what, in effect, is harassment.

The other matter which I think should be pointed out is the matter of control, whether it can be accepted or not, is subsection 2(8) which in effect says that the Lieutenant Governor in Council can in effect veto any bylaw of a municipality. They can say any business is exempt from a bylaw or exempt from regulations if a municipality does go too far.

Yes, there is an appeal to the courts, and there is also an appeal to the minister--which would come under the regulations--saying, "The municipality has gone overboard and they have done something which was not (inaudible) in the act." There is that control by the minister.

The other point which was raised was about the appeal to council of the refusal to give a licence or the suspension of a licence. Council in the initial stage, although they may have a licensing commission which does issue and does make political decisions, but in this case, as distinguished from hearings under the Planning Act of a council or a committee of council or a committee appointed by council--it does not have to be council members--is hearing an appeal on a refusal or revocation of a licence.

That hearing is subject to the Statutory Powers Procedure Act, (inaudible) a council sitting on zoning matters. That puts a different flavour on those who hear the appeals, as distinguished from the council's initial political decision. That does not preclude the fact that maybe a point has been made that there should be some appeal beyond the council to some other body between the council and the courts.

I do not know if the Ontario Municipal Board is the proper place for it, but it is a point that is well taken because the public, generally, in municipal legislation has had the right to appeal from decisions of council when they feel the council has made an improper decision, but not always to the courts. That point has been raised by the brief and by the committee, and we are going to have to have a look at it.

We are in the preliminary comments. At the end of these hearings, and probably after the hearings are over, a lot of these points will have been raised, and it is our intention to seriously consider the points that have been raised by witnesses and by members of the committee. There will be a period of time at the end of the hearings, before we go into clause by clause, which is in a day or two. That will be a period of time where the ministry can consider the points that have been raised and possibly, as we did in the Planning Act--several of you here went through that Planning Act exercise--we could come back with some recommended changes or amendments to this act.

We put this act out as a feeling of what our philosophy is. Certainly we are not married to it: to the extent that if there are proper points raised, we are quite prepared to reconsider and possibly bring in some amendments.

Mr. MacDonald: There is one thing that throws Mr. Rotenberg's comment. He says there is merit in the board of trade's proposition that perhaps to give the municipalities the power to license everything in sight, we should take a second look at that; which brings me right back to the guidelines that Mr. Baird is talking about.

He pleads not terrible competence in terms of drafting what should be in the bill, but from the point of view of businessmen, it would be useful for me, and the committee as a whole, to know what you think are the guidelines that would give the legitimate area of extension for licensing and regulation, yet not be opening the door to the abuse.

Mr. Baird: Perhaps we could go away and consider that and get something in writing.

Mr. MacDonald: That is the point that I was making earlier. I grant you the drafting will have to be done here, but you have legal advice that you can resort to, if they are going to speak from the point of view of the businessmen, as to what is the legitimate extension of existing licensing and regulating powers to cope with what is obviously conceded to be a problem we have to face up to.

Mr. Rotenberg: Mr. MacDonald, the Canadian Manufacturers' Association will be with us tomorrow morning. We have had a letter from them, and they share the concern. They may also be able to assist us.

If the board of trade has a further brief on this or further advice to us, I am not so worried about their putting it in legalese. I am more worried about the philosophy of how they would feel about the total licensing powers being restricted to give the municipalities what they feel and we feel are their legitimate rights to be in the licensing business, without going overboard. I am not saying this act necessarily does go too far, but we certainly have to consider the point made by the board of trade.

Mr. Chairman: If there are no other questions, I will thank the gentlemen from the board of trade, Messrs. Baird, Scrivener and McCracken for its presentation. Thank you very much, gentlemen.

Mr. Epp: I was wondering whether the ministry might consider drawing up a chart as to what are currently the licensing powers of the municipalities and how this particular act differs with respect to that. To engender a little more clarity for the members here, it might be helpful to know exactly what is there now and what is in the the new act, so that they know exactly what the changes are.

I know that the bill itself tries to suggest some things,

but I know, speaking for myself, that I would probably benefit by it, and I am sure the other members would too.

Mr. Chairman: Are you thinking of something like a grid?

Mr. Epp: A grid or chart.

Mr. Rotenberg: We have something we have done in conjunction with Metro licensing which I think covers that. It lists the type of business, the Municipal Act present fee limit, the new act and what Metropolitan Toronto--this covers Metro Toronto, which is probably in the licensing business to a far greater extent than any other municipality and most other municipalities put together. Certainly we should give copies of this to all members of the committee.

11:40 a.m.

Mr. Breithaupt: I think that would be helpful.

Mr. Rotenberg: This is a bit of a guideline as to what is out there now. For instance, there is no limit on fees in most of the licensing acts at the present time; for example, heating installers and equipment: there is no limit to insulation installers, launderettes and so on. There is no limit in the present Municipal Act, and yet there is not the problem that the board of trade has raised with respect to the municipalities getting in there, charging an awful lot of money and trying to put people out of business.

Mr. Breithaupt: Does that list tell us as well what items are now licensed as opposed to what could be?

Mr. Rotenberg: It tells you what could be licensed. You cannot go to 800 municipalities and find out what they license, but we will get copies for everybody because you have raised that.

Mr. Breithaupt: This tells the areas that could be--

Mr. Rotenberg: I think this tells the areas that Metropolitan Toronto now licences, which covers almost every one in the act. I do not know. Maybe we can find out if there are any that are not here.

Have you got enough there for everybody?

Mr. Breithaupt: Metro Toronto has pretty well taken up most of these opportunities, have they?

Mr. Rotenberg: Most of them, but not all of them. The Metropolitan Toronto Licensing Commission will be with us next week and they are probably far deeper into the licensing business and have far more knowledge of the licensing business than most or all of the municipalities put together.

Mr. Epp: You see, what I am really looking for is what they have licensed: for instance, Metropolitan Toronto--

Interjection.

Mr. Epp: What they may not have licensed yet could have licensed and the extent to which they can license under this bill.

Mr. Rotenberg: Under this bill they can license anything they want; there is no restriction at the present time on what they can license.

Mr. Epp: Well, there are restrictions. They cannot get into--

Mr. Rotenberg: No, they can license everything, but they cannot pass a licensing bylaw that conflicts with provincial regulations. In other words, they can license--there are provincial licensing regulations for service stations under the Ministry of Labour and so on. They can license service stations, but they cannot put anything in their bylaws that conflicts with provincial legislation.

Mr. Epp: Can they license cats?

Mr. Rotenberg: That is not a business. They cannot even license the houses where cats are kept, either.

Mr. Epp: But you have a dog bylaw. Can you have a cat bylaw? I am not being facetious. I am quite sincere about that, because I do not think they can.

Mr. Rotenberg: Yes, I think they can license animals.

Mr. Breaugh: No, you cannot. You cannot license dogs; you cannot license cats.

Ms. Sypnowich: You cannot license cats.

Mr. Epp: You cannot?

Interjection: That is discrimination.

Mr. Epp: No. That is what I mean. So--

Mr. Rotenberg: That is under something different. That is not under Bill 11 or under this act now. That is the licensing of bicycles and things. This is licensing of businesses. Keeping a cat is not a business.

Interjection.

Mr. Rotenberg: You can regulate the keeping of cats under the Municipal Act, but you cannot license a cat or a dog as such. It may be discriminatory, but again this is licensing of business in this section.

Interjection: Sometimes they are called kennels.

Mr. Rotenberg: That is a veterinarian's boarding home.

Mr. Epp: Well, you are going to do something like that anyway.

Mr. Rotenberg: Do you think this is sufficient? I think this has carried--

Mr. Epp: No, I do not think it is.

Mr. Rotenberg: By the way, I may indicate to the committee members that it is also our intention that at some stage after the hearings are over and before we get into the clause by clause we will be preparing a summary of briefs, a summary of the things the various witnesses have requested, so you will have that as well for the clause by clause.

Mr. Chairman: Mr. Epp, you are not satisfied with this--

Ms. Sypnowich: We have got another version we are showing him.

Mr. Chairman: There apparently is another version coming, which may be--

Mr. Breaugh: Well, if you don't like that version, here is another version. I remember that game.

Mr. Rotenberg: These are sort of summary sheets for--

Mr. Breaugh: This is typical Toryism here.

Mr. Rotenberg: Yes, it is typical. We want to make all information available to everybody--

Mr. Breaugh: You what? You do not like that answer? Well, how about this answer?

I just want to note in here that it is cheaper to run, according to this little list that was given us, a shop manufacturing explosives than it is to run an adult entertainment parlour, whatever that is. I just thought that was interesting. It only costs you \$300 to blow up the world, but if you want to run a strip joint it will cost you considerably more.

Mr. Rotenberg: That is under the old act. That is why we are changing it.

Mr. Breaugh: The board of trade and I are really getting on side.

Mr. Chairman: Is there anything else? If not, shall we adjourn to reconvene tomorrow morning at 10 o'clock when the Canadian Manufacturers' Association will be in front of us?

The committee adjourned at 11:44 a.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

MUNICIPAL LICENSING ACT

WEDNESDAY, JULY 14, 1982



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
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Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
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Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

MacDonald, D. C. (York South NDP) for Mr. Swart

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of
Municipal Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

From the Ministry of Municipal Affairs and Housing:

Noble, W., Adviser, Functions Policy Section, Local Government
Organization Branch
Sypnowich, M. A., Manager, Functions Policy Section, Local
Government Organization Branch
Tomlinson, J., Solicitor, Legal Branch

Witnesses:

From the Canadian Manufacturers' Association:

Hetherington, W., Chairman, Ontario Division; Chairman of the
Board, M.E.I. Canada-Ferranti-Packard
Montgomery, D., Manager, Legislation Department
Simon, P., Member, Legislation Committee; Corporate Counsel,
Northern Telecom Canada Ltd.
Stewart, N., Member, Legislation Committee; Assistant Counsel,
General Motors of Canada Ltd.

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, July 14, 1982

The committee met at 10:05 a.m. in room 151.

MUNICIPAL LICENSING ACT
(continued)

Resuming consideration of Bill 11, An Act to provide for the Licensing of Businesses by Municipalities.

Mr. Chairman: I see a quorum.

Might I mention to members that the clerk advised me after 4 o'clock yesterday afternoon that our witness for this afternoon has withdrawn his wish to appear because of internal difficulties and has asked to be placed on the agenda for next week. I have told the clerk to place him on standby. If we do have time next week we will hear him, but he should not be able to bump another group because of his internal difficulty.

I might also point out that there will be a revised agenda reaching you later this morning, but if you want to just note, on Wednesday afternoon next week there is a third group, United Parcel Service, and on Thursday morning there is the Canadian Federation of Independent Business.

I am simply bringing this to your attention, because with your own planning you will want to be kept up to date as to who is coming and when we need to be here.

We now have one of the non, or wilted, flowers of the Liberal Party joining us. Is that what you are saying?

Mr. MacDonald: No, I said the cream of the crop was already here before anybody else arrived.

Mr. Chairman: Oh, this is the skim milk coming in. I see. I just wanted to make sure.

Mr. Breithaupt: Are you talking about curds and whey so early in the morning?

Mr. Breagh: So Mr. Kolas can probably be accommodated next Thursday afternoon?

Mr. Chairman: Let's wait and see who else. We have other groups in contact with the clerk.

Mr. Breagh: Could you tell me if Mr. Kolas is representing a group?

Mr. Chairman: I understand he is representing certain unspecified adult entertainment interests.

Mr. MacDonald: That is a beautiful euphemism.

Mr. Breaugh: I have no idea what that is, but I appreciate that people might have a problem if they had a group they were responding to, given the kind of lead time we were able to offer to them. There might be difficulties in the mechanics of just setting up a meeting with the group you represent.

Mr. Chairman: I understand from the clerk that Mr. Kolas did have a meeting yesterday with his groups and has experienced certain internal difficulties and, therefore, cannot be ready for this afternoon.

Mr. Breaugh: I have no problem with the scheduling other than that I would hate to see someone excluded because we are rather restricted in the time for appearance and our notice was a bit short. So if it is possible, I would like to see that any group that wants to appear before the committee--particularly since our hearing schedule was a bit light, to be polite, on the first couple of days--I would certainly be anxious to see that the committee did not exclude somebody just because it was not convenient, and we would bend over backwards to do it.

Mr. Chairman: We will do the best we can, Mr. Breaugh. I also am disappointed, when we have a light schedule at the beginning, to see someone cancel, which will only create additional pressures towards the end.

Mr. Epp: Mr. Chairman, I was looking over the schedule here and I notice that the Association of Municipal Clerks and Treasurers of Ontario is not shown here. In reading a speech by the--

Mr. Chairman: Yes, they are on at 2 o'clock tomorrow afternoon.

Mr. Rotenberg: Your peripheral vision isn't working this morning.

Mr. Epp: I particularly wanted to make sure that group was here, because I notice, in the speech by Mr. Bennett last week to the clerks and treasurers, he gave them full credit for coming in with this bill. They were the ones who had proposed it and had been stampeding the minister's office to get it moving.

Mr. Breithaupt: Who's this Mr. Bennett?

Mr. Epp: His name is mentioned from time to time in the House as being the one who is absent.

Mr. Epp: Anyway, I thought that group definitely would want to come before the committee and I had not noticed it was on the list, so I am glad to see it will be here tomorrow.

Mr. McLean: Is the Windsor Amusement Association making a presentation tomorrow with regard to the Windsor bill? Or are they all on next Thursday, the 21st?

Mr. Chairman: The 21st, the Windsor Amusement Association. That is Mr. Crane who was in front of us on that Windsor Pr6 bill.

Mr. McLean: Will any of that group be here tomorrow?

Mr. Chairman: No.

Mr. McLean: My understanding from a party was that they were to appear here tomorrow.

Mr. Chairman: No, they specifically requested the second week as their first choice and, as a secondary choice, I think tomorrow morning. But they have their primary choice because of the paucity of representations at this point.

Mr. McLean: So they are not meeting tomorrow morning, they are not making a presentation?

Mr. Chairman: That is correct, not tomorrow morning. Why? Did you want them on at the same time as Kitchener, Windsor and Cambridge?

Mr. McLean: There happened to be a person in my riding who had mentioned to me last Saturday that he would be appearing before the committee this Thursday. I had a phone call from him last night and cannot reach him this morning. His secretary indicated he was coming to Toronto today and that he would be making a presentation tomorrow.

Mr. Chairman: The city of Windsor, and I am quite sure they are going to be on to the pinball arcade, etc. that the private bill was on, are scheduled for that time. But on the other side of the coin, Windsor Amusement Association is not scheduled until next Wednesday. If there is confusion you might speak to the clerk and get things straightened around.

Mr. McLean: He could be appearing on the city of Windsor for tomorrow.

Mr. Chairman: Thank you. Shall we carry on with this morning's witnesses, Canadian Manufacturers' Association, Messrs. Hetherington, Montgomery, Simon and Stewart? Who is the spokesman of the group?

Mr. Hetherington: I am chosen as the spokesman. As you have on your record, I am chairman of the Ontario division of CMA and would like to say at the outset we are pleased to have this opportunity of appearing before you this morning.

Mr. Chairman: Your exhibit is just being handed out, I believe, by the clerk. Carry on, thank you.

Mr. Hetherington: The copies are being handed out of the statement that I would like to make to you now. It outlines our position which I would like to present to you before asking my colleagues who are with me to assist in answering your questions.

At the outset let me say that our comments fall under three general headings: (1) The authority Bill 11 transfers to the municipalities; (2) our concerns with that transfer; and (3) some thoughts on how to properly limit and guide that transfer. We would like to give you some specific suggestions.

1. The authority transferred by Bill 11: It must be understood just how broad an authority is being granted to every municipal council in Ontario. This legislation will have potential application to every business from the smallest service operation to the most sophisticated manufacturer or newspaper. It will apply to every place or premise used in the carrying on of the business. It will apply to every person carrying on a business or engaged in it and to all the equipment, vehicles and other personal property used or kept for hire in connection with that business.

Councils will have an almost unfettered power to "license, regulate and govern" all these different dimensions of a business which include: the power to prohibit carrying on or engaging in the business without a licence; the power to separate a business into classes; the power to regulate the hours of operation; the power to revoke or to suspend the licence; the power to fix the time for which a licence shall be in force; and the power to fix the licence fee.

Beyond this, it also grants these exceptional powers: to assess competence before granting, reviewing or revoking a licence; the power to regulate, govern and inspect all equipment and other personal property used or kept for hire in connection with the business; and the power to require insurance and determine its form and amount of coverage.

We submit that this is all too much.

2. Our concerns about this transfer of power: The regulatory reform initiatives of recent years in Canada have all been directed at eliminating burdensome regulation on business and providing tests to prevent unnecessary regulation. For example, new social regulations, in order to succeed, must demonstrate on balance a clear public need. Bill 11 would empower councils to make as many regulations for business as they think appropriate without any of the restraints now recognized by senior levels of government.

Our second concern is the potential for abuse. The smallest municipality would have the power to license, regulate and govern the most sophisticated businesses in the province. No doubt most municipalities will act responsibly in identifying their business targets, but the scope of the power being granted shows how great is the potential for overreaching. Every municipality will be able to indirectly limit the number of entrants in the business and can extinguish a business by: applying competency tests; stipulating what is necessary equipment; and requiring insurance.

10:20 a.m.

It has not been demonstrated to us that there is any evidence requiring the council of every municipality to have the

power to license, regulate or govern every business. This is a very big jump from the present law and for reasons that are not very clear. These words which connote the widest powers to regulate should be limited by the statute by requiring the disclosure of the purpose and circumscribing the powers to the achievement of that purpose.

Furthermore, the municipality will be allowed to charge its licensing cost entirely to those being licensed. We have concern that this could result in unfair treatment. For example, a municipality could pass all its inspections, salary and other expenses on to a handful of businessmen being regulated. We would prefer a fixed fee concept and will dwell on this further in our submission.

Third, the scope of the legislation is too broad. The words "regulate" and "govern" have their ordinary meaning and hence would appear to allow councils to attach licence conditions to the use of premises, equipment, vehicles, etc. Furthermore, we can find no limitation outside the limited one provided in subsection 2(7) that exempts professionals or tradesmen licensed under other legislation or that exempts operation of businesses subject to other legislation, for example, the Occupational Health and Safety Act, the Environmental Quality Control Act and a number of others. To provide such a general power to regulate and govern what is already subject to other government controls unduly complicates the law, especially as only in the case of direct conflict would the municipal bylaw be struck down.

There is the lack of uniformity. If it should become popular, for example, to license automobile agencies, bottling facilities or chemical plants in municipalities across Ontario, then it is almost inevitable that different licensing standards will evolve. One may require equipment, insurance or a level of competency not required by another. This lack of uniformity will constitute at the very least a costly annoyance to uniform business operations in Ontario and may possibly even act as a barrier to the continuance or initiation of business operations.

In the matter of the lack of municipal competence, it is a matter of some concern to us that unsophisticated officials in a small municipality, for example, will be assessing the competency of businesses and individuals when this may be beyond the licensing body's own level of competence. The municipal officials will be able to regulate, govern and inspect all equipment and determine the level of insurance that businesses are to maintain as a condition preceding the licensing. We believe it is just not reasonable to expect all municipal councils to have such a level of competence for all businesses. The real concern is that lack of competence will not inhibit the desire to license selected businesses.

These are our viewpoints and we would like to address ourselves now to what should be done about them. I will turn finally to our Canadian Manufacturers' Association beliefs on this subject.

I think you will have rightly concluded by now that in

general terms we perceive Bill 11 as unnecessary legislation. I cannot say that strongly enough. We recognize, however, that Bill 11 has had second reading and has had approval in principle, so withdrawal of the legislation may not now be a practical solution. If this is so, we recommend that this committee consider minimizing what we consider to be the most offensive and presumably unintended aspects of the legislation.

(a) First, this legislation should be limited to protecting citizens who have direct contact with businesses. It should not apply to businesses that do not normally transact with the public at large. We suggest section 1 be amended so it would only apply to retail sales or leases of goods or services. We made a slight change there in order to be more specific. We suggest section 1 be amended so that it would only apply to retail sales or leases of goods or services.

(b) We do not believe this legislation should supplement the legislation regulating other professional or trade groups. Where a person is licensed to carry on a trade or profession by any provincial or federal statute, that statute should deal exclusively with the matter and that trade or profession be exempted from the provisions of the act.

(c) It is our view that the omnibus power granted to municipalities be replaced by a specific list of the businesses which can be licensed and regulated. This would undoubtedly include all of the businesses currently identified under the Municipal Act and those additional businesses where there is a current source of concern. Understanding the municipalities' desire for more flexibility, we would propose that additional businesses could be added to this list from time to time simply by order in council, rather than having to seek an amendment to legislation.

(d) We recommend the power to determine competency, require insurance or require specified equipment not be available to all municipalities in all circumstances. If special situations exist where these powers become appropriate, the province should grant them for specified purposes and direction by order in council.

Gentlemen, we will be proposing in writing some other legal amendments. These will attempt to implement what I have just outlined. Generally speaking, we will be seeking to insert what I understand lawyers call the "due process" type of amendments. That is amendments specifying the evil and limiting the remedial power to a specified purpose, and making sure that there is an even balance between the right to carry on a business and the duty to protect reasonably citizens from questionable practices. We think the bill should therefore be amended so as to permit a judicial review of the powers which a municipality should have under it. If you wonder why we are asking for such a review, let me tell you.

By giving the power to license, you give the power to prohibit. In other words, municipal councils under this bill will now have the general and unfettered power to license any business and, of course, to prohibit any business without a licence. This is a very big power to have, and we want it limited.

Mr. Epp: I guess it would be an understatement to say that you are opposed to this bill.

Mr. Hetherington: Quite.

Mr. Epp: By listening to you read the brief I get the distinct impression that you do not have any confidence in the municipalities.

Mr. Hetherington: No, I would not say we have no confidence in municipalities.

Mr. Epp: If that is the case, what do you base it on?

Mr. Simon: Just a minute. I do not think that is what the CMA is saying at all. What we are saying is we do not have confidence in the power of a municipality to administer competency tests to every trade, profession and calling in this province.

Mr. Epp: What do you base that on? Why don't you think they have the competence to make these decisions?

Mr. Simon: Let me ask you this: why do you think they do?

Mr. Epp: I am asking the questions.

Mr. Simon: I have the right to ask questions back. You are the one who is proposing this legislation.

Mr. Epp: No, I am not proposing it; the government is proposing it.

Mr. Chairman: The committee hearings are held so that parties can come before us to make suggestions, to tell us what they think is wrong with the legislation or make suggestions and so on, not to question the members. Mr. Epp is quite correct; the members' purpose is to question the groups as to why they think it is bad and why they think it is good.

Mr. Epp has a long municipal background and therefore he has some real confidence in the municipal field and that is why he is trying to find out why you seem to lack that confidence.

10:30 a.m.

Mr. Stewart: Mr. Chairman, if I might interject, I think, in answer to Mr. Epp's question, what we are saying is that there are varying sizes of businesses throughout the province as well as businesses of varied complexity. Each one has its own unique qualities and, by the same token, there are various sizes of municipalities throughout the province. To expect every given municipality to have the resources to completely understand the complexities of the businesses within their jurisdiction and to establish competency tests as to the levels they hope they will achieve for the jurisdiction is unrealistic.

At present, for varying types of trades and practices, Ontario has established certain province-wide standards which must

be met by varying trades, professions and so on. This broader type of approach is a more realistic one, as opposed to expecting the small microcosm to understand each individual business.

Mr. Epp: You make some fairly far-reaching statements here. I am wondering what you base them on. If there has not been anything in your relationship with the municipalities to indicate that they are incompetent or will be, why do you make this statement? That is what I am concerned about.

You are probably all from the Metropolitan Toronto area, although you may not be. I am not sure exactly--it does not indicate here which geographical area you represent, and that is really immaterial; but in your relationship with Metropolitan Toronto, surely to goodness there is nothing to indicate they would not have the competence here, any single municipality or the Metropolitan government. If you extend that to other municipalities, I just do not see the problem.

I can understand that in some of the very small municipalities that may be so, but I am not even sure that they would be governed in an inferior way to some larger municipalities, for the same reason that a small company with one or two or three people may be run better and more efficiently than some big companies.

Mr. Stewart: We do not really fully understand the direction of the government with the bill, in terms of what concerns they perceive the municipalities would be focusing on. If it is purely licensing as we have known it in the past, establishing certain basic standards such as an auto mechanic must have a certain type of provincial licence and must have this or that--that is one type of licensing. But to go beyond that and let the municipalities say: "All right, notwithstanding that you have that licence, we are going to set up standards for your competency. Even though you have been granted a licence by the province, we can say we think you're incompetent to do that job." We do not feel that each municipality is in a position to assess those types of things.

By the same token, if you go into a manufacturing operation, and we mentioned the Environmental Protection Act, the province has established an act with standards in it that must be met by manufacturers. We really question whether an individual municipality has the resources to go beyond that and say, "We think you should have this type of equipment or this type of process over and above what's in that particular act."

Do they have access to engineers and environmentalists and all the rest of it to say that's exactly the kind of equipment they we want? We do not think they do and we do not think that is really the intention of this bill. Because we do not think that is the intention, we say that if you are going to proceed with the bill, then it should possibly be redrafted to define the concerns you have.

If the concerns are problems the consuming public is facing with itinerant merchants coming into municipalities, or taxicabs

or with any of these things, spell them out and that way you can see the focus, where we are going. Right now, the power you are giving to license or to regulate all manufacturing or industry within your jurisdiction, all trades, callings, and business occupations, is a pretty sweeping power.

Mr. Epp: Have you got a list of the areas, the trades and such you would like the municipalities to have power to license?

Mr. Stewart: I guess what we are suggesting is right now under the Municipal Act there are 60, 70 to 80 different callings and businesses that are licensed. We suggest that perhaps the act could be amended to spell out, first of all, what you are aiming at--that is, are you aiming at some consumer-type transaction, as we think you are and as we have indicated in the brief--and have that as some type of introduction to the act and list off the various existing businesses that can be licensed now.

Then you could have some kind of a catch-all paragraph at the end that could say, "and such further and other businesses as may be authorized by order in council" or words to that effect. That way you could add to the list from time to time and in a relatively expeditious way.

Mr. Elston: It is never a healthy way to conduct business. If we had brought a bill in that said, "The municipalities have the authority to license such businesses as by order in council are designated," you people would not even be here. I never liked that sort of a catch-all phrase, if I may just interject that. It is a far more healthy process when you have an opportunity of knowing you are either in or you are out, and not coming to the end of a month and finding out that all of sudden you have been added during the first day of June and by the end of July you have to have a licence. It is never healthy, in my opinion.

Mr. Stewart: We agree with that, but what we are proposing is a compromise between what is being proposed in this legislation, which is giving municipalities the authority to pass bylaws without any kind of provincial input at all, versus the existing Municipal Act. If they are seeking amendments, if they want to regulate a certain kind of business that is not within the act right now, they normally have to seek an amendment to the Municipal Act to get that authority.

Those are your two extremes. We are suggesting something down the middle with some kind of compromise that takes into account the fact that maybe each municipality does not have the expertise to set competency tests for a given kind of business. So it takes that into account. It also says that if you want to do that, you do not have to go the route of introducing amending legislation and having a fairly lengthy process before that amendment is approved. It can be done by order in council. That will allow businesses of all types which are affected by the proposed bylaw to make representations to the minister responsible for that legislation.

Mr. Epp: One of the difficulties with orders in council is that is all done behind closed doors. You can add or subtract, depending on who has an important lobby or who even knows what is going on.

In other words, some lobbyist might be going down to see the minister and persuades him to include this by order in council. It is passed by order in council and no one knows what is happening. A week later you get a letter or something saying that a particular category, a particular group or individual classification is included; or excluded, for that matter. They could include or exclude. That is really not the way to run the province.

Mr. Stewart: We appreciate what you are saying. I suppose if we--

Mr. Epp: You know how many orders in council go out every year from here; not as many as in Ottawa but thousands go out every year. That is no way to run a province, through that kind of secrecy.

Mr. Simon: But you could build in a mechanism whereby if another business was going to be added to the list, there would have to be publication for a certain number of days of the proposal to add that business to the list, then submissions received and everyone would have a chance to make submissions.

Mr. Elston: Public hearings for the aggrieved parties, and then you are back in the process just as though we were amending legislation.

Mr. Simon: I do not necessarily agree with that. You enclose submissions after a certain number of days--

Mr. Elston: The only reason you give notice obviously is so that representation can be made. I am saying you are getting back into the whole process.

Mr. Simon: That is true, but at the end of the representations you do not have to have a bill passed in the Ontario Legislature. That is the difference.

Mr. Stewart: And there could be time limits set and gazetted for a certain number of days, in which time submissions are accepted. It can be done in the form of a proposed regulation, gazetted for, say, 60 days, just to pick a number. At the end of 60 days it is presented to the minister and becomes law 60 days thereafter unless it is withdrawn. That would allow some input.

As we say, what we would like is to have the existing system continue where you do have amending bills brought in. We do not really see what is the urgency. Why does a bylaw have to be passed so rapidly?

10:40 a.m.

I cannot perceive, personally, that there is an existing

concern out there. If it is only a three-day concern then maybe it is not a concern at all. If it is an ongoing problem that the municipality is facing then maybe we should go through the existing amending route to the Municipal Act.

Mr. Epp: I was going to say that this is not something that has been rushed through. This bill has been in the making ever since I have been here, and I have been here for over five years. It is one of the first bills I heard when I came here and there were discussions going on prior to that. So it not something that has been rushed in all of a sudden.

Mr. MacQuarrie: --from the municipalities who feel that they are really unduly fettered in licensing.

Mr. Stewart: I am sorry, I think my point was more individual concerns where the municipality would want the authority to pass bylaws. For instance, if it has a certain business that has entered its town that is of some concern to it, I cannot conceive that if it is of short duration you have to rapidly pass a bylaw to catch it. If it is a real concern then maybe the existing process should be left in place so that it would have to seek an amendment to the Municipal Act to gain the authority to licence that. It would allow some time for a little bit of a sober second thought as to whether we really need this amendment or not.

I would be afraid that potentially you could have a proliferation of bylaws: instantly a problem arises and instantly it goes away, but there is a bylaw. There you would get this adding, this proliferation of regulations. It becomes burdensome for people who want to do business in that municipality.

Mr. Epp: I can understand that it may be part of the problem, with 838 municipalities across the province, to have that proliferation.

One of the recommendations by the Board of Trade of Metropolitan Toronto yesterday was that the council should have hearings when it passes these bylaws so the public can respond, and in that way keep abreast of what is going on. What is your reaction to that?

Mr. Stewart: Right now, in the proposed legislation, there is an act in process but it is discretionary. A hearing could be allowed but whether it is before a committee or not, composed of any number of people, is at the discretion of the council.

I think that at the bare minimum there has to be a hearing process available to them and that, in turn, under section 106 of the Municipal Act, would trigger an appeal process to the divisional court. Obviously this would be a statutory power, and if they abuse that statutory power in one sense or another, there would be an appeal to a court. I think that is a bare minimum that would have to be in there.

Mr. MacQuarrie: Would that not be more or less along the lines--

Mr. Stewart: I think it is in your proposal right now, and that is how we would like to see it remain.

Mr. MacQuarrie: Even if it were not in the bill, there are a number of grounds and reasons for striking down bylaws, licensing and otherwise, and the municipality would seek its jurisdiction or action in a discriminatory fashion depending on a number of things, as we can confirm with legal counsel here. But the act certainly has all sorts of avenues of recourse against the municipalities so it might not be as prejudicial as it appears on the surface.

Mr. Stewart: Except that maybe it goes against the legislative thrust. If you introduce, right now, an amending bill to the Municipal Act, there is room for dialogue such as we are having today. To say that taking the municipality to court to strike down its bylaw is a good alternative to that is maybe not the direction you want to go.

I think dialogue is the important thing. If all that fails then it is nice to have judicial recourse, but that should not be something that is put out in front of us as the equivalent of this kind of a process.

Mr. Epp: One of the advantages about giving this to the municipalities is that I think the smaller the government the more sensitive it is to the public needs. Municipalities could sit down and discuss it with the local chamber of commerce or with some committee of business people, and so forth. I think they would be wise to use, preferably, a committee that they had already established rather than establishing another one. Certainly they should have dialogue with the local business community to work out some of the problems that they might anticipate.

In that way, I think that this bill would benefit more the municipality and the licensing of various businesses than to keep it at the provincial level, as a lot of it now is.

There is something to be said to give more local autonomy to municipalities and to let them have direct dialogue with the business community on the kind of businesses they are going to license.

Mr. Stewart: Maybe we can concoct some examples of our concerns for you but one potential example is this. Suppose there is a number of manufacturing outlets of all sizes within the municipality and it is perceived by the municipality that they are emitting noxious fumes from their plants.

The plants may be complying with the standards by the Environmental Protection Act, but the local municipal people feel they want something in excess of that and they then go about passing a bylaw that says there must be certain kinds of additional equipment added to all plants to ensure that they meet the municipality's standards.

The way the bill is structured their standards are not going to be a markdown simply because there is an Environmental Protection Act. Then what you have is, maybe, unnecessary cost being imposed on those businesses and standards that are unrealistic, simply because a number of people in municipalities say, "We think they are letting out fumes and we don't like it."

That is the kind of thing that we are concerned about. That impacts businesses of all types, particularly small businesses, when all of a sudden you have to add a \$200,000 piece of equipment to make the plant that much cleaner when the standard that has been established is unrealistically high to begin with. Maybe that is something that you did not anticipate would happen with this bill, but I could see it happening.

Mr. Rotenberg: May I interrupt for a moment because there has been a court case on this, where a municipality tried to go beyond the Environmental Protection Act. The clause in the old Municipal Act is in the present act which says municipal bylaws cannot conflict with provincial regulations. The court has ruled that under the Environmental Protection Act, which set this out, that a municipality cannot require additional things that EPA has required.

Interjection.

Mr. Rotenberg: It does not matter which municipality. There have been two court cases where municipalities tried to do just what you are been saying and they have been thrown out of court on the basis of the same clause, nonconflict with provincial regulations, in the new act as it has been in the old Municipal Act.

I understand your concern, but the courts have ruled on that particular situation.

Mr. Stewart: There is the question though that does what they establish as a bylaw conflict with the act. I am saying that this thing could not conflict at all. It might be a totally compatible thing--

Mr. Rotenberg: With respect, that was the argument made in court that the municipality's regulation did not conflict, it was an extension of. The courts ruled that the Environmental Protection Act is a provincial act and by trying to get more it is conflicting with the act. The courts have ruled on that specific narrow ground the municipality could not require more environmental protection than the provincial Environmental Protection Act required.

Mr. MacQuarrie: Similarly, one municipality passed an eminently sensible regulation requiring masonry dividing walls between units in ground-oriented multiple dwellings. That was struck down because it was contrary to the building code. That permitted wooden studs. This is the sort of thing that a municipality can--

Mr. Rotenberg: I understand your concern. There are some court cases that seem to say it is valid but it may not happen.

Mr. MacQuarrie: I will let it pass for now.

Mr. Stewart: Okay. Another concern is that the proposed bill specifically addresses a question of qualifications under the Apprenticeship and Tradesmen's Qualification Act. It says that at first blush if you are licensed under that act that is fine, you can carry on, but if you happen to act in an incompetent way, contrary to our bylaw, then you are subject to potentially being prohibited from carrying on your trade in that municipality.

Is that something that we really want either? Again, on those standards of competency, first of all the issue comes up, does the municipality have the expertise to determine those standards for the tradesmen carrying on business within their jurisdiction? Beyond that, are they reasonable standards that are established? In the end, are they being used for a proper purposes?

In the end, if it is simply that the municipality does not like a particular trade in its town, it potentially can establish standards that are so onerous no one can meet them.

10:50 a.m.

Mr. Elston: It seems to me the one thing you may be overlooking is that municipalities are in the business of accommodating, first of all, the employment of the population that lives in the municipality. They are also in the business of trying to establish a tax base, to which I am sure the manufacturing sector is a significant contributor.

I think when we look at the possible abuses, we have to at least think about those sobering second thoughts I am sure any municipal council has the expertise to deal with, whether or not they have the expertise to deal with the technical information behind what you are suggesting.

I am saying that the reasonable and rational council is going to take long looks at any bylaw put in because it does not want to destroy either the employment of the people there or the possibility of establishing a tax base. Those are thoughts that I have, and I wonder if you could suggest to me where you have seen councils acting contrary to that?

Mr. Brandt: Can I supplement that comment, Mr. Chairman? I would like to make a comment on that point, if I might.

Mr. Chairman: I must remind you that Mr. Elston's is a supplementary to Mr.--

Mr. Brandt: Mine is a supplementary to his supplementary.

Mr. Chairman: And his is a supplementary, right, and Mr. Breaugh--

Mr. Brandt: It is on the same point and I did have my hand up for questions later. This is not a question, but I wonder if, as an extension to what Mr. Elston said, you can see a situation where, in regard to perhaps a new business coming into a community, there could be either overt or subtle pressure brought on a municipal council.

I am taking the other side of the ledger for the moment, not playing the role of the devil's advocate, but giving you another potential problem which I envisage in this particular bill. You might have a reasonably well-known businessman in--pick a business, the shoe business or whatever--who, as a result of his knowledge of a small council and his relationship with that council--he could very well have served on boards and commissions and been well-immersed in the political process.

Mr. Elston: Sounds like a Tory.

Mr. Brandt: He would be more likely to be a member of another party I do not want to mention at this time.

Mr. Breithaupt: What are you planning to have him do?

Mr. Brandt: The individual in question could perhaps raise the invalid argument of too much competition in a particular sector of the economy locally. I have had that happen, and I am sure others have, when we have served on municipal councils. The argument has been raised that things are very tough in that business and to bring one more competitor in, to whatever location, is a bad thing. We do already regulate taxicabs--we limit the number of those--and it has been suggested we should extend that to limit other things, gas stations or whatever.

Do you see a potential on the other side of the coin? I recognize most councils want lots of industrial assessment, lots of commercial assessment, and that is sort of a taken. I appreciate that is a reality and that is normally going to be the position taken by a council. But they could potentially, I suggest, and I am wondering if you see the same potential, for political reasons or on a straight judgement call, determine that a particular business is already over-represented in the community and decide that business cannot come in.

Now I recognize the bill says, although somewhat unclearly, that monopolistic arrangements are not to be allowed within the context of this bill, but in various and sundry ways I would like to raise during my questions, if I might, I can see mechanisms available to a council where it may take that particular approach. In answering Mr. Elston, I wonder if you might answer me as well, if you see that as being a potential concern.

Mr. Simon: One of the things I was going to say--Mr. Epp was saying that the local council is very responsive to the local businessman, and that is one of the things that occurred to me. Maybe it is a little too responsive. That is one of our concerns, that this bill, or act if it is passed, is going to be used as a vehicle to limit the entry of new businesses into the municipality through competency tests, necessary equipment to carry on the

business, compulsory insurance and so on. That is one of our real concerns.

Mr. Brandt: It could be in a minority of cases, I admit, but if the potential is there, I believe it is one we have to address ourselves to in the bill.

Mr. MacQuarrie: If we use the discriminatory devices, the bylaw could be open to challenge.

Mr. Simon: Yes, but if you have three businessmen in the municipality and they all have certain kinds of equipment, you can write your bylaw to say that is the equipment you have to have. Anybody else who tries to come in and does not have that equipment has to go out and get it because it is in the bylaw.

Who is to say whether that is discriminatory? The purpose of it is, but that is not the way it is written.

Mr. MacQuarrie: I do not think you would see too many municipalities turning down too many businesses on the basis of equipment.

Mr. Simon: That is true. But we are here to raise ambiguities.

Mr. MacQuarrie: I realize that.

Mr. Hetherington: Mr. Chairman, may I comment and perhaps go back to Mr. Epp's first question on the matter of confidence in the competency of the municipalities across the country. In our business, we deal with municipalities across Ontario. It only follows that when you have such a large number in varying degrees there will be variations. It is a question of degree as to who is competent and who does not have the level of competency we are talking about.

This whole question gets back--I may say philosophically--to doing business in the province, and the province attracting business and the municipalities attracting business to their areas to provide employment. What the businessman is continually running into is more and more regulation, more and more ways in which he has to satisfy certain requirements. If these become nonuniform as we submit they are likely to become with a bill such as this, it is going to become just that much more difficult across the great variety of municipalities in Ontario.

The same thing has happened in my business on the national scene. When various provinces were competing for companies, we would get overcompetition in one area and not in another. It is fundamentally opposed to our competitive market economy and we are trying to build an economy in this province. Sure, you have full confidence and you want to be confident that people can act responsibly. If we lived in an ideal world and all these municipalities were 100 per cent responsible and 100 per cent competent, the thing would work. We are concerned that they may not be. It is just more regulation which will inhibit the investment in this province.

There are many things a businessman has to look at in order to decide whether he will expand or build anew in any particular area. This could be just one more that he may have to look at. When you are trying to decide where you are going to invest your money, there are many factors and if you keep adding to them, then you are inhibiting the investment which this province in particular and this country in general really need. So our concerns are broad in that respect.

We see this leading to abuse and leading to potential problems and potential overregulation by parties that perhaps may not have the competency to deal with them. Consequently, our proposals are--not to throw it out, because there it is; you have got it this far--that it should be limited to those areas where there is a real concern and should not involve those businesses that are not dealing with the public at all and which are being regulated in many ways at the present time. This would be one other restraint and one other inhibition to invest. That is what this country needs.

Mr. Breaugh: Mr. Chairman, I want to begin by saying that even as an opposition member I accept the principle that is the basis of the legislation. My problem is not with the principle that a municipality should be able to license those people who conduct a business within its jurisdiction. My problem is almost exclusively with the mechanics and with the drafting of the bill. From an entirely different perspective from where I would assume you came at it, we are close to a consensus.

I think the bill goes far beyond anybody's intentions and considerable redrafting is necessary. I want to pursue some of the points you brought up. You seem to take a bit of negative attitude towards smaller municipalities. Unlike you, if I were sitting on municipal council in Toronto and somebody put to me that I was now being given the responsibility to license and to regulate every single business operation in my jurisdiction, I would go nuts.

With unlimited resources, I suppose I could go out and hire all of the wisdom to regulate and to license everyone who runs a business in Metropolitan Toronto, but I would hate like hell to take that back out to the taxpayers in the next municipal election, and I am not sure how I would ever accommodate all of those people on the staff.

I would come at it from the other point of view: as a municipality I am happy with the traditional sense of licensing, but I am unhappy with the drafting in here, which seems to indicate that I have to go far past that and get into areas where I would be almost trying to parallel other levels of government. So I would come at it from the point of view that I do not like the idea that the current situation says there are these businesses which can be licensed, because it is the municipality that is faced with the first reality of a new business or a new business concept. They have to take the flak. The province and the federal government have to sit around for three or four years until it hits that level, but it is municipal council that gets it.

11 a.m.

I am looking for a bit of consensus here. If I changed your words just slightly, are you in agreement that the problem really is that municipalities would have great difficulty in fulfilling all of the words that are written here? If the intention is otherwise, that is, to license in a traditional licensing sense rather than to go out and set safety standards and set insurance standards and all of that to provide for some uniformity, you would not have much objection to that, would you?

Mr. Stewart: That is a pretty fair assessment, really. I think the only point that may work against you there is that one section in the proposed bill right now refers to licensing costs. It says, \$10 or the cost to administer the whole program, in effect, divided over the number of people to be licensed. So if a municipality felt it needed to acquire that expertise, it could go out and hire it and it could hire the inspectors to police it.

If there were six people who were subject to the bylaw, just divide six into the total cost, and there it is. I think that is equally burdensome to those people as what you are suggesting, Mr. Breaugh, that maybe municipalities do not want all of this power, which might be too costly for them and too burdensome.

Mr. Breaugh: I really think that is a drafting problem in the legislation. My reading of that is if I lived in a small town and somebody came in to set up a chemical plant, and I didn't know what in hell they were producing or what processes they were using in there, I would say that this act now allows me to go out and hire some big city consultant to come in and provide council with that advice. If the tab is \$25,000, I don't give a damn because I will charge this guy a \$25,000 licensing fee.

I do not think that is the intent, but I think an accurate reading of the bill says that can happen. I do not see why we are doing that. I do not think that is anybody's intention and I think it is a drafting error. So I would not be as cautious as you. The debate in principle on second reading was an argument about whether we think this is a good idea to proceed to broaden the licensing powers. It does not mean that the mechanics of the act have been improved by anybody, including the minister, who has not appeared as yet, but his parliamentary assistant has indicated that he is going to listen to groups who will be effective, and draft some amendments.

I think we are close to some agreement, perhaps in different perspectives there.

Mr. Mitchell: Quite frankly, Mr. Breaugh, I would hope the parliamentary assistant might respond to that particular area, because I have some concern that a lot of small municipalities will not have that expertise. Because that other doorway is provided, they might just do the very thing that Mike is talking about.

Mr. Breaugh: I anticipate that when we go through clause by clause, we are going to see several amendments from the

parliamentary assistant, which will clarify the intent and close some rather obvious loopholes.

Mr. Chairman: Mr. Mitchell, to keep a little bit of order to this, I have asked the parliamentary assistant to wait, and if he has some questions of the witnesses--

Mr. Mitchell: I was not asking for an immediate response.

Mr. Chairman: At the end, when members have finished with their questions, he is going to--

Mr. Mitchell: But I think it is a very valid point that has been raised.

Mr. Breithaupt: His comments may lead to others, and he can join in.

Mr. Rotenberg: I am in the chairman's hands. I will speak when he--

Mr. Chairman: If Mr. Rotenberg did get going in the middle, we might have a less orderly morning.

Mr. Breaugh: You just recognize his chaotic tendencies, that is all.

I want to get some clarification on some of the things which you cited from the act itself. The first section is the power section, if I might refer to that section.

Can you contemplate by what criteria a municipality might separate a business into classes? I do not even know what the hell that means. Are they talking big business, little business, good business, bad business, responsible business, irresponsible business? The drafting of that one is so broad as to be ludicrous. This is almost like adult entertainment parlours. I do not know whether that is a strip show or Mozart in my living room.

Would you have any ready suggestions as to how you might classify businesses?

Mr. Mitchell: That might be a situation, if I might just interject, such as the point I was raising yesterday about gas bars versus service stations.

Mr. Breaugh: I would like to hear from the Canadian Manufacturers' Association. They attempted to do a bit of that when they went into retail sales, or leases of goods or services. That is just about as broad, but if we separate them into classes I frankly do not have much of a concept of what that is.

Quite frankly, I know when I sat on a municipal council we used to have some difficulty when we stuck our noses past planning matters into this kind of power to classify, to regulate, to revoke or suspend licences. The difficulty was fairly obvious to us.

To give one concrete example, we had a lot of doctors and lawyers who were in old offices. We were attempting to redevelop the downtown and convince several people to put up some office buildings. The doctors looked at that and said: "I do not want to pay that kind of rent. What I will do is buy an old house. I will displace a family, renovate and write it all off on my tax." What we found was they were very nicely working around our attempts to plan an orderly community and causing further disorder.

That would be one way of classifying a professional office as being one class of business. But aside from that, I do not know where they are going.

In your latter comments, you essentially said that all they should be dealing with are businesses that deal with the public. I want to point out to you that if that is your definition of it, for many municipalities, whether a business deals with the public or not is rather irrelevant in terms of causing problems for the municipality. I can see from a business person's point of view, that may be the key criterion, but from several other people's point of view that is only one of many. I would have some difficulty with that.

Do you have any comments about classification systems?

Mr. Stewart: Our response stems from not knowing precisely what the government intends by this bill. Obviously, when we read the introductory section to Bill 11, we see it has a sweeping brush for all types of businesses, including itinerant sellers, and all the rest of it. We do not really know within that if they are really concerned about specific types of businesses.

The existing Municipal Act mostly seems to deal with retail sales, leases or services, or something that will go directly to a consumer. Are we interested only in carrying on that type of thing and do they just happen to throw in these other words such as industry, manufacture, and the rest of it, or what? We really do not know, but we suspect that the real thrust was businesses that directly touch the consuming public. That is why we made our suggestion on page 5 of the submission.

Again, that is something that we are a little bit in the dark about as well. It is difficult to classify them. What does that mean? Will they classify them by their volume of sales each year, the kinds of business, or product lines? I do not know.

11:10 a.m.

Mr. Simon: Under the present Municipal Act the power to classify is given with respect to a very short list of businesses. One of the examples I have is lodging houses in section 208 of the present Municipal Act. It gives municipalities the power to classify lodging houses, but that power to classify is not given to each one of the businesses which are now set out in the Municipal Act.

One of the problems you run into when you have a general act such as Bill 11 is you still want to keep the power to classify

but now, because you have a general act, you are giving the power to classify over everything whereas, formerly, you gave very specific powers to classify.

As my friend said, we are as much in the dark as you about what that power really means and why it is there.

Mr. Breaugh: This whole section is a good example of my difficulty with the act. I think the intention is to say that if it is not covered by federal or provincial legislation, in other words if it is something new, they will have the power to license. Traditionally, that is the kind of response we get if somebody starts up a new idea out there in the municipality and it says, "We don't have any power to license that under the Municipal Act so we want a private bill to allow us to do that."

If it is something new, I have no problem with it. I am a little confused as to why the government chose to put it in such broad terms, because I would suspect that is their intention as well.

If it were proposed in roughly those terms, which is that what they really mean here is if there is something that comes up which is totally ungoverned and totally unregulated, then a municipality has the right to pass certain bylaws to govern and to regulate, I would not have a whole lot of problem with that.

The other difficulty I would have is the other side of the coin. You have made a bit of an argument that maybe they are not competent to judge, to regulate and things like that. Do you have any concerns, as I would have, that maybe they do not want to be competent?

We went through a series of times in the 1960s and 1970s when municipalities were underbidding one another on things like industrial land. It got so bad that finally the province stepped in. I would reluctant to see us kind of get into a situation, especially now, in hard economic times, where municipalities say: "Well, come to Whitby. You can pollute the snot out of the place. We don't care, we want the business so bad that we don't care what kind of an operation you run. Our regulations will be very loose."

That would be my concern. I would mention the other side of the coin. I have always understood that it is manufacturers' traditional position that what they would really like is uniformity. They realize there might be a bit of short-term gain in the municipality that lets them get away with something they should not, but they know that in the long run they are going to have to clean up their act anyway. They provide a more stable business atmosphere, so to speak, if they at least all have a common set of rules, and there is not kind of undercutting anywhere in the process."

Would you tend to agree with that?

Mr. Stewart: I think your first point about the conflict of laws argument makes a lot of sense. If there is existing legislation out there--it should be not the intent of this

bill--and it should be clearly set out that is not the intent, to step in and try to parallel either existing provincial or federal legislation, whichever is the jurisdiction. So I think that has to be made clear at the outset.

Going beyond that, if there is no law on the books anywhere, it does not trouble me that the municipality should be the one that steps in, in effect to pass its own legislation through the vehicle of a bylaw. In one sense, the traditional licensing of businesses, the way I perceive it, does not trouble me. It is when it goes beyond that and into these competency tests and that kind of thing that it starts to get into this whole thing. Do they really have the overall view in mind?

As you say, is it a short-term thing to either duck a bylaw so a business will be attracted for a certain period, or to come in and impose so strict a bylaw that nobody would want to do business there? I do not know if that is what the province really wants or by the same token if that is what the municipalities want either.

I think that intention has to be thought out pretty carefully. I know from the business perspective on it--you are right--if you are looking to locate a new plant or to start a new operation, you look at the whole mix of factors, all the economic factors, the prevailing legislation, proximity to your customers and all the rest of it, and then make a decision.

What you do not want to have happen is if you make that decision and two months later, at someone's whim, it could all be changed and there you are with a lot of investment that is now sort of redundant. You want to have long-term planning.

I think that type of planning can best be done in a macro sense by dealing with larger governments. That is not to discredit municipalities in any way. It is just too important to the future of this province and its growth for that type of area to be shifted down too readily to the municipal level.

Mr. Simon: I think your question was not that, if I understood it correctly. What you seemed to be saying is that some municipalities do not want this responsibility of administering competency tests. Is that not what you were saying?

Mr. Breaugh: That may be a problem. Some may decide: "We don't care whether you are competent or not. If you are going to give us any revenue, we are happy to have you." I am a bit concerned about that.

I do know that in the 1960s and 1970s, for example, that was a very real problem in developing industrial lands. Some municipalities put all kinds of sweeteners on there and, of course, we still face competition from some American states where that is the accepted process.

The consensus in Ontario, and I think pretty well across Canada, is that that was a dead end for everybody concerned. From a business person's point of view you got a few breaks initially, but if that is what got you in there, it generally resulted in

problems down the line. If you located your plant for maybe some tax savings initially, if it was a dumb decision, eventually you realized it was a dumb decision, and you should not have done that in the first place.

Mr. Simon: But from where we are sitting I do not think we can answer your question because we have to assume the municipalities want this power. We are faced with a bill in which a lot of power is transferred to the municipality, including the power to give competency tests, so from where the CMA sits, we have to assume that somebody wants the power, that the municipalities do want that power. If some don't, my suggestion is that the answer to your question should come from the government.

Mr. Breaugh: To be fair, though, I think it is reasonable to say that almost every municipality wants this licensing problem resolved, but they did not draft the bill. Some of their staff may have had a hand in drafting it, but I am not sure they have all read this particular act. If they did, I am not sure they would be happy with it.

In the next section that you--

Mr. MacQuarrie: May I interject with a supplementary?

Mr. Breaugh: Sure.

Mr. MacQuarrie: Mr. Stewart had indicated that he felt the situation might better be approached on the macro level, at the provincial level. What sort of licensing functions would you give to municipalities?

I realize there could be problems, where you have provincial regulations affecting a particular trade or enterprise, in establishing levels of competency and the rest of it, as far as the employees go. What sort of licensing responsibility and what trades should be licensed by the municipalities? We will assume for a moment that trades and occupations, callings regulated by the province, are outside the municipal sphere. What then would be left for the municipalities?

Mr. Simon: Our suggestion was that the bill simply say that a business is that kind of a business which the Lieutenant Governor in Council may by regulation put on some kind of a list, and then on that list there could be put in the businesses which are already subject to licensing under the Municipal Act at the present time, and whatever businesses where a problem may arise from time to time.

Mr. MacQuarrie: One of the reasons, of course, the municipalities have pressed for a resolution of the licensing function is that there are some types of business creeping up and coming to light every day that they want to regulate and really would need to have regulated at the local level. Assuming that a distinction can be drawn between the provincially controlled enterprises and the municipally controlled enterprises, it is a question of which group of enterprises fall into which.

I can see some argument, of course, for the type of enterprise that is, by and large, under provincial control, whether it is environmental standards, occupational standards, apprenticeship training programs, or any of a number of things that determine the competence of the operation.

Mr. Stewart: I took a broader distinction, that the province supplies the jurisdiction that sets the standards. It says what you have to do to become a qualified auto mechanic, and then it is up to a municipality. If it chooses to license auto body shops or whatever it can go ahead and do that. It may be on the pure basis that it is a remedy base for them. It sees a business operating there, and to be entitled to operate in that municipality you have to pay a licence fee.

11:20 a.m.

What troubles me is when it goes beyond that to having municipalities assess the competency over and above whatever the standards set by the province are. That is where I get into difficulty.

Mr. MacQuarrie: You feel that the College of physicians and Surgeons of Ontario should set the licensing for medical doctors and not the municipality?

Mr. Stewart: No. It should set the standards of competency for doctors, and it has its own mechanisms to police its own physicians, but if a doctor chooses to operate in a particular municipality, he may well have to obtain a licence and pay a fee for that licence in order to set up his practice. The municipality is not going to say, "Here are the standards for a triple bypass operation."

To get back to your other point--

Mr. MacQuarrie: I will bring that into my main line of questioning.

Mr. Stewart: All right. How do you add new a business, as Mr. Simon suggested there? We suggest it could be done by regulation. If the municipality perceives that a new business has come to town that has to be dealt with, it approaches the government and regulations are drafted and gazetted. The people who would be affected by that regulation would have an opportunity to come forward to the government and say, "No, we do not think that is appropriate."

Mr. MacQuarrie: Sometimes regulations appear without the people affected knowing, but the main thing then is you would have regulations possibly dealing with one municipality and not with another, depending on where and how the potential problem arises.

Mr. Stewart: Our suggestion is a compromise. It takes it away from the municipality to say on its own, "Yes, we are going to regulate this new business, and these are the standards." Then the neighbouring municipality does it in a different way and somebody else does it in a different way. At least this way there is some initial input from the province, so that the province,

once the regulation is passed, adds this new business to it. The municipality can then set the licensing standards.

Where I again have difficulty is with this whole idea of competency. As an individual, that really bothers me. I think competency is something that should be assessed on the broader level.

Mr. Rotenberg: I think there is some misunderstanding of what the act says about competency. We have got a lot of this--

Mr. MacQuarrie: I am sorry. I guess I interfered unduly with Mr. Breaugh's line of questioning.

Mr. Breithaupt: Just in this line--

Mr. Breaugh: Does anybody else want to interfere unduly?

Mr. MacQuarrie: I went a little bit broader than I had expected.

Mr. Breithaupt: In terms of the idea of a variety of competency, would you not expect in effect that a municipality bringing in a new bylaw in a certain area would effectively follow a precedent from some other municipality so that uniformity would more or less likely occur rather than this variety of definition you are presuming as the worst-case scenario?

Mr. Stewart: Again, just as you say, it more or less likely will happen. Maybe it will, but maybe it won't. In each individual business, some may work that way and some may not. That is the concern.

I think at a bare minimum the bill has to be redrafted. If there are going to be competency standards that municipalities can set, then I think the province has an obligation to set some guidelines in the bill as to the characteristics of competency, to say: "You can interpret that as you wish, Mr. Municipality. If you interpret it in excess of the powers that you have been given, you are subject to some court review." But at least there are some guidelines. Right now, God, that is an awfully wide power.

Mr. Breithaupt: I agree with you it is a wide power, but I also feel that the--

Mr. MacQuarrie: --for instance, passed a licensing bylaw citing the levels of competence for assistant counsel.

Mr. Stewart: It certainly would.

Mr. Chairman: Mr. Breithaupt, have you finished?

Mr. Breithaupt: That is fine, thank you.

Mr. Breaugh: The next section you pointed out, referring to exceptional powers, and one of the areas where I have a concern, is the granting to a municipality of the power to regulate, govern and inspect all equipment. The concern I have there is that equipment, in particular, gets closer to something I

can actually understand, and it bothers me somewhat that new equipment would be licensed, regulated and inspected at the municipal level first.

I would make an argument, for example, with things like home insulation materials, where the equipment and the materials themselves are changing fairly rapidly now, that there ought to be one standard across the country. That standard should be set by the federal government. I hate to admit this, but I would have more faith in them than any other level of government to do that. Even if they did the usual stupid thing that they do, at least we would only have one mistake to live with instead of 800 in Ontario.

In your opinion, is that the process you would prefer to see: one kind of agency for the country, or the province setting the standard and then going through it that way? As an example, one of the interesting conversations I had over the weekend was with an RCMP officer who now is charged with the responsibility of investigating fraud under various federal programs for home insulation. It struck me as particularly odd that the federal government is keeping the RCMP busy by their home insulation programs. It probably is because there are not a lot of standards set there. There are standards about the effects of the insulation but not about the equipment used and not much monitoring on the thing.

What would be your approach to that?

Mr. Simon: You have to look at who has jurisdiction over what is happening. First of all, I think philosophically we are opposed to anybody telling a manufacturer, for example, what equipment he should use to manufacture the items which he chooses. I guess on the broadest basis we would not want any government to tell a manufacturer what equipment he should use.

Secondly, I think you are going to run into jurisdictional problems between the federal and provincial governments if you try to suggest that some manufacturing operations over which the provincial government has jurisdiction should now be regulated by the federal government. I think if there is going to be some kind of a standard it should be a provincial standard where the provincial government has jurisdiction, and perhaps a federal standard where the federal government has jurisdiction.

Mr. Breaugh: My argument would be simply this: Instead of having everybody do all of this stuff, all perhaps conflicting, or maybe by some stroke of fortune all coming close to the mark, let us pick one and designate the level of government that sets the standard and have everybody agree to it.

You said something which disturbs me a little bit. Surely to God, in this day and age you would not all agree with the statement that you do not want anybody saying what equipment you can use. There has to be some small measure of accountability in there that the equipment any manufacturer uses has to be reasonably safe; if it has detrimental effects on the population at large or the people who work there, you won't have any

God-given right in this day and age to continue to use a piece of equipment which is clearly dangerous.

Mr. Simon: Just a minute; let me interrupt you there. There are already existing statutes which in effect tell people what equipment they have to use. I am thinking specifically of the Occupational Health and Safety Act, which tells you quite specifically what protective equipment you have to have if your employees are working in a certain environment.

This bill comes in at a totally different level in that it would give the local municipal council the right to tell every business in the municipality, if it wanted to, what equipment they would have to use in that business. Our entire submission is that we do not want that to happen with respect to every business in a municipality. There may be some businesses for which that may be appropriate, but surely not every business in a municipality.

Mr. Hetherington: Could I give you a specific example? It may clarify this particular argument which you have raised, which is a good one.

I am involved in a business which has transformer plants in two different municipalities in Ontario. We use similar equipment in both plants. If we are going to make an investment in a new piece of equipment to do a certain operation, we want to do it the same in both.

Those pieces of equipment are subject to health and safety regulations. In Ontario, inspectors come in and state that the equipment is safe or it is not safe. It would be chaos if in one municipality they agreed and in another municipality they ruled some other level of safety. Then you would have to have two different pieces of equipment or adjust them separately. That is the sort of thing we are trying to get at.

11:30 a.m.

Mr. Rotenberg: I don't think the act now has the right to do that. First, the act does not allow a municipality to specify equipment. To regulate does not mean to specify. Secondly, and more important in the example you give, under the law and the act, if health and safety makes certain requirements, the municipality cannot make requirements over and above health and safety. That, we understand, is the case law.

Mr. Simon: Let me stop you there. We do not agree with what you are saying. There is a subsection in the act which says that in the event of a conflict that other act governs. What we are talking about is that in a lot of situations there is no conflict, because that regional act when it was passed never envisaged that municipalities would have this kind of power. So there is, in effect, no conflict.

Mr. Rotenberg: With respect, I think you are reading into the act a lot more than is there. The municipality does not have the power such that someone can say to General Motors or to

the furniture manufacturer, "You must have this type of equipment."

Mr. Breaugh: You have raised an example which is at the heart of this. It shows the kind of problem we have.

In my community we had a fire a couple of years ago at an old tannery which had been closed down for several years. There was a federal regulation and a provincial regulation which allowed for the storage of certain materials there. That is all well and good. There were two levels of government which supposedly somewhere had pieces of paper saying what was stored in that barn. But when the fire broke out it was my municipal fire department that had to respond. They did not even have a clue as to what the hell they were dealing with.

In my view the way to resolve this problem is not to have a third level of regulation, but simply to have one level of government tell the other level of government what the hell is in that barn. It is my firefighters who have to go down there and respond to that.

They were dealing with toxic substances in that case. They had no idea even how to try to begin to extinguish the flame. No one thought of a simple thing like posting a notice on the outside of the barn door as to what was stored inside. No one had got to that point yet. It seemed to me there was complete abandonment of any kind of common sense. That is what the municipality was begging for.

I think the problem here is a little communication difficulty. The municipalities have been saying: "Listen, our people, our municipal employees, often have to respond to a situation like that--a fire or whatever might happen, an accident, perhaps--and we do not know what we are dealing with. We want to know what is in those places."

I do not think they are asking for the powers that are drafted in this bill. I think they are asking to be informed as to the situation. They are asking: "What is stored in that barn? What kind of equipment is being used in that factory? What kind of chemicals and materials are being used in factories in our community? Our firefighters have to respond to that."

It seems to me that is a legitimate request, but it is a hell of a long way from what is drafted into this bill. You would not have an objection to that kind of thing.

Mr. Simon: No.

Mr. Montgomery: If I could add a word, Mr. Breaugh seems to be saying a lot of things that CMA likes, which I guess--

Mr. Breaugh: Careful now--

Mr. Montgomery: --was not very predictable.

Mr. Breagh: --can't take donations if you have more than eight employees.

Mr. Montgomery: On the question of standards in the broadest sense, I think that CMA would support a uniformity of standards. There are three standard-making bodies in the country, the Canadian General Standards Board, the Standards Council of Canada and the Underwriters' Laboratories of Canada. We are supporters of trying to get those mandatory standards uniform across the country.

For instance, if you are alluding to the transportation of dangerous goods, we are very pleased to see that the provinces are going to adopt the standard which is on a parallel with federal regulations in this area.

I think you are right in saying that we would be concerned if a new municipal standard was going to be set up which would be nonuniform with standards that should probably be more properly set at a provincial or federal level.

Mr. Breagh: To be honest about it, the real difficulty is that it seems damned near impossible in this country to get different levels of government to arrive at a sane conclusion in a reasonable period of time. The one example you mentioned is, unfortunately, probably one of the worst examples. In 10 years they have not been able to put into reality common guidelines on the transportation of dangerous goods.

It is unbelievable that we would have gone through 10 years of arguments as to how one would sign the container, what shape the sign would be and what would be listed on the outside. Meanwhile, there is atomic waste rolling through town, Mississauga blows up, all kinds of factories go.

I guess it points out there is a very real problem there. I am trying to get all these people together and arrive at a consensus. Maybe it would be resolved if we designated someone to be the person who actually does that and everybody else follows suit.

Mr. Rotenberg: We cannot designate, unfortunately. If we could we would solve many of our problems.

Mr. Breagh: I'm not sure I would like your guys designating anybody. I saw your retail sales tax, David. I'm not sure you guys should be passing out apples on the street.

Mr. Rotenberg: We don't have to.

Mr. Breagh: The way things are going you may have to very shortly. On page 7--

Mr. Brandt: Is all this appropriate to the bill?

Mr. Breagh: He was interfering unduly. If you can get him to shut up, we would proceed with this much faster. He is being provocative.

Mr. Brandt: You are being provocative.

Mr. Breaugh: He is not good enough to be provocative.

Mr. MacDonald: I will be referee.

Mr. Breaugh: On page 7--

Interjection: --Claude Bennett.

Mr. Breaugh: I have never been one who wanted Claude Bennett. I do not know anybody in the world who did.

Mr. Brandt: Here we go again. He was not being provocative.

Mr. Breaugh: On page 7 of your brief, near the end of it, you asked that the bill be amended to permit a judicial review of the powers a municipality should have under it. Yesterday we heard testimony that what was meant by a judicial review was some form of an appeal to the OMB, a quasi-judicial body.

Could you clarify for us, just a bit, what you might have in mind when you talk about a judicial review? I take it you are asking for something less than your normal rights to go to court under some kind of litigation process.

Mr. Simon: We are not asking for any such thing. We are not asking to go to the OMB. Unfortunately, the words at the end of the submission are not very well chosen. I think you can just ignore them.

Mr. Breaugh: Rather than just ignore them, could I get you to clarify at some future time what it is you wanted?

Mr. Stewart: I think what we are really after is something equivalent to section 106 of the Municipal Act now, which I imagine applies to this bill if it becomes law. It would allow us judicial review under the Statutory Powers Procedure Act by the divisional court. It is there and we would be quite content with that.

Mr. Breithaupt: Could we have it confirmed that this is not a problem?

Mr. Rotenberg: You should have the right to review--

Mr. Breithaupt: That this review is in place.

Mr. Stewart: I am pretty sure section 106 applies to the act. It says--

Mr. Breithaupt: Let's get that confirmed right now.

Mr. Rotenberg: If you look at the top of page 5 of the bill, it reads "and the provisions of section 106 of the Municipal Act apply with necessary modifications to hearings conducted..." Section 106 does apply to bylaws or things passed under this act.

Mr. Breaugh: I would not give you quite such a quick reply to that. It is a new piece of legislation. It is not tested and I think you might be forced to go off to the courts to see whether those things do apply. Certainly, as it is now drafted, it is extremely broad. I think you might have a little bit of difficulty. I don't think you are going to get the right sort of court that you want.

Mr. Stewart: Yes, Mr. Breaugh. Assuming section 106 still applies, then I think the bill has to be amended to give clarity to what is a reasonable exercise of implementing a competency test, and that type of thing. The court then can look at what the municipality is trying to do and it has something to measure it against. Right now, that is not in the bill. I think that is a key point.

Mr. Rotenberg: My understanding is that any bylaw passed by a municipality is subject to a judicial review.

Mr. Breaugh: You can get almost anything in front of a court these days. That does not necessarily say it is going to do you any good.

Mr. Stewart: But the kind of review you get involves: Did the municipality exceed its powers? Did it decline its powers? Did it act in excess of its jurisdiction? All those old common law things have been brought in and codified under the Judicial Review Procedure Act and the Statutory Powers Procedure Act.

What we are saying is that we think it needs a little bit more than that to have some concept of reasonable exercise of powers: Was the competency test a reasonable thing in the circumstances in the light of what it was trying to regulate? That type of thing.

If you had a little of that in there, first off you would get the idea of the competency test with standards imposed in the legislation itself here, saying, "Okay, these are the kind of things that you look at in the competency test." Then if this thing ever comes to a court, with any given bylaw it could say, "All right, these are the different standards that the province is looking at, and was directing the municipalities to address their minds to when they adopted these competency tests. Have they exceeded those powers or not?"

Now you do not have anything in there like that. It just says, "Yes, you can pass a competency test." Who is to say if it is reasonable or unreasonable or fair or unjust or whatever?

11:40 a.m.

Mr. Breaugh: Could I just ask one final question? This does not appear to be so, but was it the case that you were involved or consulted in any way along the line, as this particular draft was put together?

Mr. Montgomery: No, we were not. We became aware of this legislation only when the predecessor bill was introduced. We

contacted the ministry at that time and indicated some concern about it.

Mr. Breaugh: The concept of a bill of this nature has been around for quite some length of time. I thought the reason it took so long was that there were a whole lot of people being consulted as to the ramifications. You were not?

Mr. Montgomery: No. As a matter of fact, this caught us by surprise. The title of the bill did not indicate that it was a bill that would affect manufacturing. Hence, perhaps we were a little bit asleep, until Bill 157 was introduced. We did not get time to get in a submission on Bill 157 because you prorogued very quickly before Christmas when we were in the process of preparing it.

Mr. MacQuarrie: Mr. Chairman, I have a certain strong confidence and faith in our municipalities and in the fact that they act reasonably and responsibly in most circumstances; I would say particularly in licensing.

I guess the parliamentary assistant could no doubt confirm that in most municipalities in Ontario, if they do have a licensing bylaw, it is a very primitive sort of bylaw, notwithstanding the fairly broad licensing powers given to them under the Municipal Act. We get into fairly sophisticated licensing bylaws in the larger municipalities where they have encountered and expect to encounter problems where they want to exercise some measure of control in the overall interests of the community.

Something strikes me in the prospect of abuse that you people raise. I might also say that the Canadian Manufacturers' Association is an organization very highly regarded by most of the municipalities that are seeking assessment, so there is certainly no intention on the part of most municipalities to make life miserable for the business community. That is just the economic fact of municipal life.

Although there might be a potential for abuse there--and I am not attempting to say there is not--I just cannot see a municipality really going out of its way to abuse the privileges or the licensing rights it might have under the legislation.

First of all, if there is abuse, to my mind, it can be successfully challenged. Second, when you come down and try to take some examples, they might be fairly ridiculous. Can you imagine Sudbury trying to license Inco, or specify the various things that the legislation purports to allow them to incorporate in the licensing bylaw? It just would not be practical. It would not work, and I do not think you would see the municipality even look at it.

It is the same with Oshawa and General Motors, or any number of things. You just would not see a municipality getting into that field at all.

As I understand the legislation, there has been a press by

the municipalities over the years for broader licensing rights. They want to get more control over what they consider to be undesirables, or enterprises that require some control, and they find they are being frustrated, that the Municipal Act does not apply to this one, does not apply to that one, does not apply to the other one; and there is a new one coming up every day. To my mind, this is going in some of the general direction that the legislation has taken.

I think you have made some very good points. I do not necessarily agree with the point that if a certain municipality wants a certain broader power or a power with respect to a certain enterprise then it should be done by order in council. That seems to be a very indirect way of doing something that really should be done directly. There might be areas in this legislation that could be tidied up that could satisfy some of the concerns.

Getting back to your concerns about the prospect of lack of consistency or conformity across the province and this sort of thing, no doubt there is some merit in the argument; but with the larger municipalities, I think you will find uniformity in a lot of their licensing bylaws. There is a considerable amount of that now, with municipalities exchanging bylaws. You will see almost the same bylaw coming forward from the city of Kitchener and the city of Windsor or wherever.

We asked this question yesterday of other delegations. I just wonder whether there is a certain amount of overreaction on the part of the association. That really is my question, whether you see in this legislation a bit of--I used the term yesterday--a bogymen.

Mr. Stewart: I do not think so.

First, I should make the comment that generally we too have confidence in municipalities, but we are saying there are over 800 municipalities out there. There is always the potential that things could go awry and bylaws could be brought in that would not be all that attractive.

We are saying that the legislation--we are not so much criticizing individual municipalities; the scope of this bill is so broad and sweeping that it opens the door to potential abuse, and we do not think the draftspeople in the government really would want that to happen. Why open a massive door and then allow the potential for something to happen when you can avoid it?

Mr. MacQuarrie: Then, should the door be opened at all? Let's get down to cases. Do you agree that the door should be opened at all and that the municipalities be given more licensing powers?

Mr. Stewart: If they are encountering difficulties because they feel they have to keep coming back to the provincial government each time they have a perceived concern out there, all right, they should be allowed a better mechanism that is more expeditious to deal with these problems; but we suggest that what is in this bill right now is not the appropriate mechanism and it

should be thought out more carefully to get in it a more acceptable mechanism that addresses the concerns of the municipalities.

Their concern seems to be, as you are indicating, if new businesses come to town they want a new and a relatively expeditious way to come to grips with those new businesses if they are a problem to the municipality.

By the same token, we do not think that this kind of thing, which says, "You can go ahead and license anything you want"--I am exaggerating this thing, but the potential is there. We say, "No, that is not the approach you should take. You should look for a mechanism that will address that problem, that will address their concerns and hopefully will come to grips with our concerns in this, as well".

Mr. MacQuarrie: Then basically you would agree to broader licensing powers being given to the municipality, but--

Mr. Stewart: Not necessarily.

Mr. MacQuarrie: Just let me add the "but."

Mr. Stewart: Go ahead.

Mr. MacQuarrie: But with the range of enterprises they should not. Would I be correct?

11:50 a.m.

Mr. Stewart: No, I am almost saying exactly the reverse. We do not see the need to broaden the powers. They have existing powers there right now. What seems to be the problem is expanding them to cover more businesses.

We say you should develop a mechanism that will allow them to deal with these new businesses as they come to town but not give them the massive power to develop competency tests for existing things we can already license and regulate.

Mr. MacQuarrie: I can see the argument certainly, but the emphasis is on enterprises that are subject to provincial control and licensing in terms of standards of competence of employment, etc. Maybe the municipality should not be involved in the licensing function except possibly where that business has a direct effect on the community. I cannot conceive of a case at the moment.

Mr. Stewart: Can I just speak to your point about the order in council too? What we are really after in the compromise proposal is a system where the Lieutenant Governor in Council may make regulations. That is what we are really suggesting, as opposed to order in council, which was probably a bad phrase to put in there. If it is by regulation, there is an established procedure for how regulations are gazetted and the amount of time required to solicit responses from interested persons.

I think that overcomes some of your concerns. If it is an order in council, I think Mr. Breithaupt's concern is it can all be done by the back door. All of sudden one day there is the order in council with no consultation. I think the compromise we are suggesting is more by regulation.

My own personal view is that if you are going to do it that way, maybe it could go the route of gazetting a proposed regulation, as I said before, for a certain period of time. During that time public response is solicited, and at the end of that time frame it is submitted to the minister and unless he withdraws it within a certain period of time it becomes law. That way it allows all parties in the Legislature to see the regulation and all parties who are interested in obtaining copies of the Ontario Gazette can see the regulation.

If it a really notorious type of proposed regulation, no doubt the media will pick up on it and it will get exposure. I say that is a workable type of compromise. I prefer the existing one where they have to seek amendments to the Municipal Act but I do not think that is the thrust of where the government is coming from and we are trying to suggest this compromise that may accommodate all concerns.

Mr. Chairman: Can I break in at this point? I believe it is appropriate for Mr. Rotenberg to make some kind of statement as to the government's intentions which may help clarify our future discussions and questions. Messrs. Brandt and Elston have yet to ask questions of the witnesses.

What is the committee's wish so far as continuing to sit or coming back this afternoon or whatever, in view of the fact that this afternoon is open, the previous witness this afternoon having been cancelled? What are your wishes?

Mr. Breithaupt: Mr. Chairman, I think rather than bring our guests back this afternoon, we can go ahead and complete this by 12:30 p.m.

Mr. Chairman: Fine, thank you. Mr. Rotenberg you have some clarification, perhaps.

Mr. Rotenberg: Maybe some clarification, maybe some comments, maybe a little bit of argument.

Mr. Brandt: If the parliamentary assistant is going to do his summation now, I think that is somewhat unfair to perhaps Mr. Elston and myself because--

Mr. Rotenberg: It was not summation, just comments. I am easy.

Mr. Breaugh: I suggest we move ahead with the two questioners and then allow Mr. Rotenberg to--

Mr. Brandt: I have some questions that may better be answered by the parliamentary assistant, although I am going to address them to our delegation. There are some areas of the

questioning to which the parliamentary assistant may wish to respond.

Mr. Breaugh: We will give him a chance to do that.

Mr. Chairman: The only thing I was trying to get around is if the parliamentary assistant has a position, for example, that will delete X then there is not much purpose in carrying on a question and answer bit on the subject of X.

Mr. Breaugh: It has never been my experience that he could do that.

Mr. Chairman: Might I call upon the parliamentary assistant for some succinct statement, if any--

Mr. Breaugh: I will put up \$5 that says you will not get any.

Mr. Chairman: --which might shorten up the questions?

Mr. Breaugh: I will put up \$10 against that.

Mr. Elston: Do you want a motion in favour of chaos at this time?

Mr. Chairman: No.

Mr. Rotenberg: Mr. Chairman, there are a number of points which I wanted to comment on about Mr. Brandt's question so it is difficult for me to pick out one or two areas.

The main thing on which I would like to comment now, which may assist, is the first recommendation of the deputation that this should be confined to the retail sales, leases, and so on.

It was not the intention of this bill, although if you read the bill it allows it, to allow Windsor to license its automobile manufacturers or the city of Toronto to license Massey-Ferguson or John Inglis. This was not the intention.

The reason things like industry and manufacturing were put in the bill is because there are a number of businesses which call themselves manufacturers, but because of things like direct factory sales, they deal directly with the public. We have seen them all around.

I think I mentioned this yesterday, and I will say it again today, it is our intention to change section 1. I use the words "our intention" because getting back to lawyers and drafting, it may not come out quite the way it is put at the present time.

It is our intention to refine the definition clause in section 1 of the act. This would not say "retail" which municipalities are now doing and they should license things far beyond retail, but would somewhat constrict the definition to businesses, including manufacturers and industry--and we may or

may not use those words--which deal with the public from any form of consumer point of view.

Mr. Breaugh: Name me one who does not.

Mr. Rotenberg: The direct factory sales would be caught up in this thing, but General Motors or Massey-Ferguson would not. There is no intention, and there never has been any request from any municipality to license those kinds of businesses.

As I say, I do not want to be too definitive because having heard what has been said in committee we want to constrict that.

The second point I want to discuss--and maybe the first point solves the second point--is this idea of specifying equipment. The act does not read that the municipality would have the power in its bylaw to specify equipment. It is a question of how one reads the word "regulate."

The act now allows a municipality to license boat rental operations. You can specify the kind of boats and equipment in the boat. These are for health and safety regulations. We have no intention of the municipality being able to specify those things. They can regulate but not specify those things. We have no intention of regulating the press in General Motors in Oshawa that punches out motors, and so on.

We feel the term "to regulate, govern, and inspect the premises, facilities, equipment, vehicles" and so on does not give the powers the delegation thinks it gives. However, it may do that, so we intend to review that.

The first clause talks about who could be licensed. We are going to change our intentions somewhat because it went too far, but I do not think we are going to change our intention which is to allow them to regulate from the point of view of health, safety, service to the public, those kinds of businesses and equipment which serve the public or which are rented by the public.

There is no intention to specify the kinds of transformers Northern Telecom are going to put into their factory. That section may need some clarification, or may need some slight rewriting, but the act does not say they can specify equipment. It never was our intention and the act has to be reworded somewhat to indicate that. I would say that those businesses--maybe some manufacturer can be licensed, but the municipality should have the power to regulate equipment, etc. with which the public has contact, or which is used to serve the public.

That may not go as far as the Canadian Manufacturers' Association wishes it to go, but I think it takes away their major concern of being able to come in and specify equipment.

There are some other concerns which I will deal with later, but those are the two main concerns and the thread of a lot of the conversation. We are going to try to go a long way to satisfy the concerns of the delegations.

Mr. Epp: Can I ask Mr. Rotenberg a question?

Mr. Chairman: Yes.

12 noon

Mr. Epp: The matter came up earlier that CMA was not consulted on this bill. Which groups were consulted on the preparation culminating in Bill 11 over the last five years? Can you give us a general category?

Mr. Rotenberg: The major ones that were consulted were the municipalities and those who were involved. I was not involved at the time this bill first came up, but I assume that CMA was circulated with the bill even though, as they said, they did not tumble to it.

One of the problems, I assume, was that originally--two years ago--the bill indicated there could be licensing with no fees. That proposal was made about four or five years ago. I guess if fees are charged a lot of the concerns would disappear: municipalities would not hire the \$25,000 consultant, as Mr. Breaugh mentioned.

Maybe because of representations by municipal council the idea of a nominal fee or a cost recovery was adopted. It was done after the first go-around, I believe. I am going to take some advice here because Marcia Sypnowich did a lot of this. She has been involved for many years.

Mr. Breaugh: Let's kick Rotenberg out and put her in. Sounds like a more direct route.

Mr. Rotenberg: Would you run a candidate in the by-election if I resigned my seat?

Mr. Breaugh: Oh, would I ever.

Mr. Rotenberg: If it is no better than the last one, we are not too concerned.

Mr. Mitchell: Back to the bill, Mr. Chairman.

Mr. Breaugh: Do you want to pay up the second \$10 on the bet to me now?

Mr. Rotenberg: We can just say that we have had comments from a lot of people. I have not got the list now, but I can get it for you.

Mr. Breaugh: Could you be a little more definitive than "a lot of people"? This is an interesting argument. I hope Hansard is picking it up.

Mr. Rotenberg: A number of people have commented on the last bill, including the manufacturers' association, but I don't know now at what stage, Mr. Epp.

Mr. Breaugh: You said they did and the CMA said they didn't?

Mr. Rotenberg: It is only recently that they have commented.

Mr. Simon: The question was, did CMA have an opportunity to sort of look at the draft bill before it was actually introduced for first reading and the answer to that was no. There is no question that the CMA saw Bill 157.

Mr. Breaugh: That is not the point. The point, as Mr. Rotenberg just said, is CMA responded to Bill 157.

Mr. Rotenberg: I said they responded recently.

Mr. Epp: Thank you. Let's get back to my question, which was, with whom did the government really consult in order to develop Bill 157 and Bill 11? In other words, it is not a matter of circulating the bill, it is a matter of sitting down and saying: "We are proposing this bill. What are your views on the various aspects of this bill?" For instance, the Canadian Manufacturers' Association, the municipalities, whatever other major groups would be involved, would be concerned about a bill of this nature.

I was under the impression, obviously wrongly so, as Mr. Breaugh was also, that over the last four or five years time has been spent to consult with various groups who were putting input and expressing concerns about certain clauses, and that that was what was holding things up.

Mr. Breaugh: Before it was presented to the House.

Mr. Epp: When CMA came in today and were presenting their views, I thought they had been consulted all the way along and that they had not got their wish with some of the matters in the bill, which is understandable; that they had not been able to convince the minister on some matters of the bill and that, therefore, they were before the committee to convince the committee of their views rather than to convince the ministry. Then the committee would either accept or not accept their views and that would then go to the minister.

Mr. Rotenberg: Their first contact with the ministry was earlier this year after they read Bill 11. Whether or not they had Bill 157 I am not sure, but to my understanding they did not.

The main people we talked to were the municipal people, but there have been contacts with independent businessmen, with various contracting associations such as electrical contractors who were licensed across the province, people who were already involved in municipal licensing, and at various stages after the first bill came out, which was three or four years ago, we had various comments from various groups of people. CMA was not one of them at that stage.

Mr. MacDonald: Coming into this rather fresh and

uncontaminated, it is my impression that the people who were involved in the first instance, the municipalities, were wanting the power, and those who were going to be affected by the extension of that power are now coming into the picture for the first time.

Mr. Rotenberg: A number of those who were affected have been in the picture for two or three years, but CMA was not. As someone said, they didn't really tumble to the fact that they would be affected by this bill until recently. Rightly or wrongly, we did not go looking for them.

Mr. Montgomery: Our first contact with the ministry was in the fall of last year when Bill 157 was sitting at first reading. The contacts were made by telephone in an attempt to try to seek out what the ministry was up to and whether it really intended to apply to manufacturing generally.

To be fair with the ministry, I think they may have been a little surprised that the bill could be interpreted to apply to manufacturers generally. Hence, that may have been the reason we were never approached. We did not make any formal representations until the Bill 11 stage.

Mr. Chairman: Thank you. Does that answer your question, Mr. Epp?

Mr. Epp: Yes, thank you.

Mr. Brandt: Gentlemen, I gather from your presentation to date that one of your real concerns is the potential impediment to doing business in the context of this bill for a number of reasons that have already been outlined. Do you see anything whatever in the bill that would encourage business?

I ask that question because at this particularly critical time in the economy of our country I think we should be doing things to attempt to encourage business on occasion. You have highlighted the negatives. Are there any positives that you would like to mention in addition to your recommendations? In other words, is it just bad all the way through?

Mr. Stewart: I would not just want, outright and blanketly, to say it is bad but certainly it is not going to do anything to help business. I do not think it is going to be a very helpful bill in its present form. Even with the amendments, which may make it so it is more conducive to being able to do business across the province in any municipality, it is still an impediment, really, whichever way you look at it.

Mr. Brandt: I have a real concern that sometimes in an attempt to clear up a problem we create a bigger problem. Legislation is not always the answer to the problems of the world. There are problems out there; the body shops and the massage parlours or whatever they are called--we do not have those in Sarnia, by the way.

Mr. MacDonald: You just have not found them yet.

Mr. Eves: If they were there, he would have found them.

Mr. Chairman: If there are no body shops, how do you get your car fixed?

Mr. Brandt: Having said that, there are areas in the bill that I can see a need for. I just wanted to ask that question for the record so that you could give your views.

I do not think there is any question that we are going through a very critical economic time. All too often we do tinker with legislation, perhaps the mechanical form that just adds one more obstacle to business being able to grow, develop or expand and create jobs and do the things that we yell and scream about so often in the Legislature. When it comes down to the grass roots, the functioning part of the business, we sometimes ignore the realities of the marketplace. I just wanted your response to that.

Mr. Stewart: I guess when you look at the thing, if you look at other kinds of provincial legislation--occupational health and safety, say--it is directed at a specific problem and business can address that problem; it can make responses. Ultimately it comes up with a piece of legislation which may not be totally acceptable to it but it knows, okay, these are the rules of the game and it is going to have to work within those rules.

In this piece of legislation, if it is an act either in this form or a modified form, unless it is more clearly spelled out exactly what the government intends, business does not know where it stands. It will not know until we start to see bylaws coming out. So you create uncertainty; and uncertainty for any individual, either a private individual or a business, is troublesome. You like to know where you stand, you like to know what the rules are, you like to know there is some predictability; and you want to be a responsible citizen.

Going back to Mr. Breaugh's point, there are a number of laws--health and safety laws, environmental laws and so on--in which it is important for the province to become involved. A business which wants to do business in this province has to abide by those rules, not just to tolerate them but to understand them and to work with the government to facilitate them and make them work properly.

We do not see that in this kind of legislation. It is just something there that is an uncertainty.

12:10 p.m.

Mr. Hetherington: Can I make a comment on that general philosophical question? I think it is a good one. To the degree that this or any other change in legislation would provide a more stable society in which to do business, to prevent the undesirable businesses from creating uncertainties and undesirable conditions in the locality in which you are doing business, any business would like to see that. But as we see this, it goes too far and thus gets into the area where it creates uncertainty and lack of

uniformity and lack of the stability by which you can foresee the future and invest your money and get on with the job.

As always with these things, when you start to get them too far ahead, then it goes far beyond the original intention of the legislation. That is the concern we have. But something obviously needs to be done in order to allow municipalities to act more quickly in those very undesirable situations that inhibit them.

Mr. Brandt: In your reading of the bill, do you see any concern with respect to the potential for harassment in that the stated intent of the bill is to charge for a licence only those fees that would be directly related to the licence and that any regulatory costs as such would be priced or costed against the general tax rate? There is a clear division intended there in the legislation, as I understand it. However, there are many ways of upsetting a business enterprise. One way might be an overzealous inspector.

As an example, if you had a licensing commission or a licensing officer, or whatever, in a larger municipality, that individual could well make repeated visits to a plant, retail store, operation of whatever kind, not necessarily in the form of a vendetta against that business. But if he were to call on that business frequently during the course of a given year, that becomes a time factor, a cost factor. It ties up staff and so forth. Do you see a potential for that in the bill? There is nothing in the bill, as I read it, that limits the number of inspections the person can make. I appreciate it may be a red herring, but do you see any problem in that respect as well?

Mr. Simon: I think our reading of the bill is not the same as yours with respect to the cost indemnification aspect. Subsection 2(6) says: "As an alternative to fixing licence fees in accordance with subsection (5),"--which is the stipulated amount to be charged for the licence--"the council may fix the fees for licences issued by it in such amounts that the total of the fees paid to the municipality for all such licences in any year does not exceed the total of all expenditures made by the municipality in that year for administering and enforcing the licensing bylaws of the municipality in respect of those licences."

What that says to us is that you could go and hire a consultant to advise you what equipment may be needed, you could set up a competency tribunal and, at the end of the year, just divide all those expenses by the number of licences that were issued, and that is how you determine your licence fee as total indemnification for whatever mechanism you set up.

Mr. Brandt: Perhaps, in Mr. Rotenberg's comments, he might be able to cover that point, because I think there is some potential for misunderstanding as to exactly how those fees are going to be determined, who is going to pay, in what fashion and so forth. There are a number of different mechanisms that might be employed to raise the ante. That would concern me in some respects.

Mr. Stewart: If I can interject, it seems to me you would have to write into the legislation certain standards for

what is relevant to be included in costs, to establish a licence fee and perhaps even a maximum. You could include things, such as the office administration and certain other things, and then have to a maximum of \$100 per licence, or some fee to be established again by the Lieutenant Governor in Council by regulation from time to time, keeping in mind that there is some mechanism through which the municipality can come back, again on a relatively quick basis, and say: "All right, \$100 is not enough any more. It is more like \$200. That is a more realistic upper limit."

If you do not have that upper limit, as Mr. Simon says, this is a licence for a municipality to go and hire all these inspectors, to license it to hire all the experts needed to establish certain--

Mr. Brandt: A consultant.

Mr. Stewart: And ultimately to (inaudible)

Mr. MacQuarrie: In terms of upper limits, while they certainly would be reasonable in most circumstances, I can think of a case in a particular municipality where any realistic upper limit just would not cover the cost of the problem that arose. That was a visit by one of the rock groups, the Eagles or the Rolling Stones. They expected attendance of somewhere in the order of 40,000 people with vehicles piling up roadways and prospects of vandalism up and down the road with security, police force, fire department, road department, all the rest of it put in there at tremendous expense to the local municipality.

Mr. Breaugh: The city of Oshawa made money when the Rolling Stones came to Oshawa.

Mr. Stewart: But again I think you have to look at the theory that underlies the licensing fee. Is it just a revenue source? Is it a source to totally defer all costs that are incurred in--

Mr. MacQuarrie: They must have operated in a municipal facility.

Mr. Breaugh: They did.

Mr. MacQuarrie: In this case it was not. It was on a privately owned racetrack.

Mr. Brandt: Certainly the licence fee is not to be looked upon as a revenue source. I think that is very clearly stated. I do not know that the bill makes it as concise as I would like to see it. I share your concerns and I can see situations such as my colleague is talking about, but those are very far out exceptions to the rule. I think there has to be some control built in that would ease your concerns a little more. That is why I am raising the question. We can maybe get the parliamentary assistant to respond to that as well.

Another question I wanted to raise was in regard to the delegation of powers under this particular bill. Would it be

preferable to you, from a business standpoint, in that at the moment certain licensing functions are carried out by police commissions--you did not mention this in your presentation, but the police commission has that function at the moment specifically, because it deals with the potential for stolen goods being passed on through secondhand shops, through junk yards, stolen cars, and that kind of thing.

Again to the parliamentary assistant: This bill does not make it clear enough whether those powers can, in fact, be delegated. I assume they can be delegated to a commission, but if they cannot be delegated to a commission, would it cause you any concern that a police commission would not be in the same position to control, let's say, illegal operations that are going on, where they may hijack a warehouse or deal with stolen goods and pass them through these other channels or outlets?

A council does not have the same information available to it that a police commission would have available, in that certain confidential information passes through a police department, for example. I am a little concerned that this bill does not cover that aspect of it as well.

Again thinking about it, in relation to your concerns in the business environment perhaps, there are a lot of thefts that take place, breaking and entering, and a lot of manufacturing operations are hit along with small businesses and so forth. These goods are then fenced and this whole fencing business has got to be controlled as much as it can be, through the proper vehicle, which in my view is the police commission, and therefore through the police department. Did you look at the bill in that context at all? Is there any point you wanted to make on that?

Mr. Montgomery: No, we did not. That never did come up in our discussions. I think you may have a very valid point.

Mr. Brandt: That is all I have to ask at the moment, Mr. Chairman.

Mr. Elston: I wonder if we might get back to the question of costs. You recommended in your presentation that you would much prefer the idea of a fixed fee, probably from the point of view of having something clear to zero in on.

12:20 p.m.

Can you suggest to me the types of things you might perhaps include in a regulation which determined how you would compute the fee? Then, what upper limit you are suggesting, or what do you think is a reasonable upper limit?

Mr. Montgomery: No, we have not come down hard on that. As indicated in the statement, we said that we would do some thinking in this area and include it in our submission, which, I understand, has to be with the ministry by July 23; other than to say that we would support the concept of something that was determinable, rather than something that was open-ended.

Mr. Elston: Just so that you know that if somebody is hiring a consultant of some sort, the cost of that, perhaps, cannot exceed X number of dollars. Is that the type of thing you are looking at?

The next question I have to get down to is sort of philosophical in nature inasmuch as we have to determine if there is to be a licence, who pays for it? Should it fall to a manufacturer, business, or whoever is licensed, or should the taxpayers have to subsidize the operation of it? How do you comment with respect to that?

Mr. Montgomery: I think traditionally, the CMA has supported user-pay concepts.

Mr. Elston: However.

Mr. Montgomery: This is a question of whether this is a user-pay concept. That is something we will have to address, I suppose, in making this submission.

Mr. Elston: When you are making your submission I assume you are going to be sending it to the committee rather than to the ministry directly; is that so?

Mr. Montgomery: It will go to the committee, I guess.

Mr. Simon: In addition to what Doug has said, the word "license" is very elusive here. We are using the word "license" but one of the things we do not like is what are all the powers which are included in the power to license? It is one thing to set up a licensing fee which pays for the people when issuing that licence, but it is another thing to set up a fee which includes the cost of a competency test, for example, or hiring experts in insurance to determine what kind of insurance coverage you should have. These are all the things that are included in the power to license regulating in government. I think you should keep that in mind.

Mr. Stewart: And ultimately, too, if that is taken to extremes in that a license fee was so high to the business that was to be licensed that it kept people with valid businesses out of business, then who are you hurting? We say it would hurt the municipality.

It goes back to this gentleman's comments, we do not think a municipality would want to do that kind of thing. It would want to keep businesses. It is in their interest. Sometimes things can get distorted, and that is our fear; potentially that could happen and you may be keeping valid small businesses out.

At this time when there is such difficulty assembling capital to keep going, or to start up, if you have such a high licence fee that you would keep them right out of it, who are you really hurting?

Mr. Elston: If the ministry comes around and they are looking at the definition section, but they put out a new

definition that excludes the members of the CMA from the operation of this act, what comments do you have on the bill as to that? Is it still as difficult a bill to deal with? Probably we are getting past the point of your business associations because it no longer affects you in that nature, but what about in your personal capacities, or the view that your association might take of this bill from the public and social standpoints?

Mr. Montgomery: I think we have to take a little broader view than that. First of all, by the changes that will be made to section 1 it will not automatically exempt all manufacturers. There are a number of manufacturers that will be dealing with the public: the Avons, etc. Therefore, it will not be a clear exemption.

Some of the other concerns we have expressed here will continue to be concerns. One of the concerns is one that maybe municipalities themselves should take a second look at because this legislation is going to lead to some political pressure on them, I think, in certain circumstances. It touches on the concern that Mr. Brandt expressed earlier that this may be used as a device, or perceived to be a device by some businesses to eliminate competition.

It is quite conceivable, for example, that people who have the shoeshine parlours in town are going to be putting pressure to be licensed so the little shoeshine boy down the street is not taking away the shoe shine; or that the flower shops are going to be pressing to get rid of those girls standing on a corner, with their flower stands, underpricing them.

That does not directly affect manufacturing, but it does affect the concept of competition and the freedom for entrepreneurs to do their thing. Some of you may have different views on that, but I think we would continue to express those broad views of concern about--

Mr. Elston: Yes, but it would be better if we did not have licensing.

Mr. Montgomery: No, I think in legitimate situations you have a necessity for licensing. Most of the ones identified in the current Municipal Act no doubt are legitimate situations.

Mr. Elston: Okay. How do you we get to the process, then, of coming up with the new legitimate situations; and how do we come up with getting those new legitimate situations covered in time for a municipality to react to the situation? That is really the crux of this whole problem; and I am sure that is part of the reason that the municipalities originally came to the ministry. I am almost positive that part of the problem was that the municipalities would react by putting up a bylaw of some sort or other to react to a situation which they thought might possibly be covered under the Municipal Act. The bylaw probably was challenged, and as a result there was no bylaw, the business was set up, and they lost the opportunity to provide regulation.

How do we fit in a mechanism that deals with the problem effectively and quickly enough to cover those legitimate situations, whatever they might be?

Mr. Montgomery: First of all, I think we have to leave the identification problem up to the municipalities. I think manufacturers are not sensitized enough to the problems of whether or not the roofing contractors are really--

Mr. Elston: The bill does leave that up to the municipalities. It does not say they must, does it?

Mr. Simon: It seems to me there are two extreme positions. The first one is the present situation, where the municipality now has to come to the Ontario Legislature and say, "We now want to license these people. Could you pass an amendment to the Municipal Act to specifically give us that power?"

The other extreme is this bill, which says that the municipality does not have to come to the Legislature at all. It now has jurisdiction over every business, and all it has to do is to pass a bylaw if it thinks there is a need.

The thrust of our submission is that there is an intermediate position between those two: that is, that there should be a list of things over which the municipality does not have to come to the Legislature.

Mr. MacQuarrie: Could that not be accommodated--and we are getting back to this question of regulation and orders in council and the rest of it. Subsection 2(8) of the bill, I think, has a provision that the Lieutenant Governor may pass regulations exempting certain businesses from the act.

Mr. Simon: As I see it, subsection 2(8) is an abuse section, really. That requires some positive action on the part of the Lieutenant Governor in Council, to say, "Municipality X is abusing the power given to it in Bill 11; therefore, we are going to take away that particular power of which they are now seized to give a competency test to dentists." We are proposing something else.

Mr. MacQuarrie: I tend to look at it in another way, that is, that the minister would make recommendations saying that certain classes of businesses should be exempted from the licensing provisions of the bylaw and a list developed as you see this developing in any of a number of other regulations. My other question then would be, "What trades and businesses would you include in that list?"

Mr. Simon: I think we have a difference in opinion as to the approach. You would like to have a general approach, with some exceptions--

Mr. MacQuarrie: A general approach. You see, there has been a move in the province to transfer to the municipalities as much local authority as possible, within the ambit of their operations. One that they have exercised for a long time, either

through the municipal council itself or through boards of Commissioners of police, is the licensing function. It has been limited up until now. The legislation purports to broaden the ability to be licensed in terms of businesses, but then we have this one subsection that says that by regulation you can except whatever businesses are included in the regulation from the application of the act. Consequently, that might be one way of approaching it.

12:30 p.m.

Mr. Breaugh: Would it not make more sense to simply say: "Those operations that are already regulated and licensed by federal government are excluded. Those that are licensed and regulated by the provincial government are also excluded. All others are included"?

Mr. MacQuarrie: There is one other section in the act that indicates that where there is conflict--

Mr. Breaugh: If I wanted sense, I would not look that way. I am looking this way.

Mr. MacQuarrie: --between other acts where there is some regulation the municipality should not get involved. I think that section could be tightened somewhat, but you have pointed out a couple of areas with possible weaknesses in them. Where you do have other authorities in control of the particular operation, then I do not think the municipality should get involved.

Mr. Simon: The approach we proposed is that there be specific list of such other things as the Lieutenant Governor in Council thinks. That would in effect put a sane head--I don't want to push this too much--but that would require the municipality to come to the Ontario government and say: "We think there is a problem with this type of business in our municipality. Would you add that to this specific list?"

To us, that is preferable to the situation where they have the power to pass the bylaw first and then to have the provincial government come into the process later when someone says: "This municipality passed this bylaw. We do not think that is right. Therefore, put an exemption into it."

Mr. Breaugh: The only flaw I can see in that argument is that if you don't like the provincial government which drafted this bill, why in the world are you saying that the same group of folks can in secret, by order in council, pass the regulations which would govern the specific industries covered?

Mr. Simon: I don't think that we don't like the provincial government. We have found them to be fairly reasonable and they have been very responsive.

Mr. Breaugh: I don't understand why you are here then. I really don't. You have objections to a bill which has been passed, published and printed. Not to discuss political affiliations or anything, but this group of folks is the same bureaucracy which

put together this bill. Why are you now saying they would be a wonderful group of people to put together the regulations?

Mr. Simon: The bill has not been passed. The bill has received second reading and is now in front of this committee, where it seems the Progressive Conservatives are being reasonable in their responses to our concerns. I am saying that is a desirable thing from our point of view.

Mr. Breaugh: Oh, good.

Mr. Epp: You should be choking on that because they were the ones who didn't consult you after five years of preparing this bill. They really were insensitive to this. We are playing games here.

Mr. Stewart: When we look at this, we are looking at a bill with a very broad scope and we are saying we have certain concerns about a bill of that type. We also hear what has been said today too and we appreciate that municipalities--it may not be the right phrase--have "come of age." They have developed competence in areas and it seems the thrust in the province is to allow those municipalities to exercise the abilities they have.

So, it would seem to me to utilize subsection 2(8) and say that to trust them from the word "go" means General Motors or some other company is going to run in there and get an exclusion right off the top, because God knows they don't want to be touched by them, defeats your concept.

Your concept should be to let them come to you and say: "Wait. We have found an area." If we do it by the regulation route, we will be getting some public exposure to it. But the initiative is with them. They say, "We have identified the problem and we want to be able to pass a bylaw to do it and we would like you to pass a regulation that would let us do it." They would get the regulation, in my little theory of it, in fairly short order and they go with it.

Now, if it turns out that we have an opportunity to make submissions to the government during that regulation time frame, if we have been unsuccessful and some injustice starts to develop in that bylaw, the individual company could then go under subsection 2(a) and say, "Okay, now we have got the evidence of how that bylaw is being abused, we want exemption from it. It is hurting business in this province."

This is not necessarily the view of the CMA, but my personal view of the route that thing should take. To give blanket removal of certain businesses right from the top is bad.

Mr. Breaugh: The only difficulty I want to point out to you of the choice you have put before the committee this morning, is that there is no public input in the regulatory process.

No member of the Legislature, save probably the parliamentary assistant and the minister, will see that regulation

prior to it being published. You will not have a public occasion to do that. You may be able to make a phone call to the minister's office.

What is a little more pertinent is that the public out there supposedly being served by this regulation will not even know it exists until such time as it is published. Then you have to revert to it.

From a municipal point of view, that has traditionally been the argument about why they do not want to go by means of regulation. They want the legislation. This may have some faults in it but, as you have said, at least you have a chance to see it in print, a chance to appear before a committee and make your suggestions publicly, and so will all the other groups which will be affected by it. The regulatory process abandons all of that. That is my problem with the regulatory process.

Mr. Brandt: Can I just mention, to balance the ticket, that is not entirely correct. In fairness, many regulations are proposed by groups and organizations involved in that regulation, who promote those regulations to the government, and then they go through the process.

Mr. Breaugh: That is right.

Mr. Brandt: So to suggest they do not get any public input is not correct. In many instances, it is not the government initiating these large numbers of regulations. I can think of regulations that have been passed pertaining to agriculture, for example, from the milk producers or egg producers.

Mr. Breaugh: That is a good example.

Mr. Brandt: It goes on and on. They come from the groups that are involved and who wish to in some way regulate their particular function in society in a somewhat more logical fashion, so that, I just wanted to give--

Mr. Breaugh: I grant you that, Andy. The only point I am making is that there is no public part to the regulatory process in Ontario, or in most jurisdictions for that matter.

It is true to say that people who the government thinks would be directly involved, or who think themselves they would like to see a certain kind of regulation written, have the opportunity to approach the minister or the assistant and say, "How about a regulation like this?" My objection to it is that it is not fair from the point of view that all parties affected by it may not be approached.

For example, this bill essentially follows the model of the regulatory process. Those people who would implement it, that is the municipal clerks and treasurers, play a fairly significant role in drafting this piece of legislation. It then gets printed. Because it is in legislative form, it goes to a committee and the public can come in and say their piece.

I think it would be quite wrong to pass legislation and to pass a regulation by that means. I want some access point so other people who may be affected by that regulation have a chance to say their piece.

Mr. Rotenberg: Can I interrupt this discussion, because it is not the government's intention to pass this bill or amend this bill in a form in which there will be a list of things that can be permissive to license and then have other things passed by order in council or regulation. That is not our intention. That would frustrate the whole philosophy of the bill.

I think this discussion is somewhat academic, because the government will not be recommending the point of view which is put forward. We have a list and then others can be added to the list by regulation. There may be a change in definition, but not a list and regulations.

Mr. MacQuarrie: Could we have the parliamentary assistant's interpretation of clause 2(8)(a) where we have authority to pass regulations providing that a business "...shall not be subject to, (a) a bylaw passed under this act..."

Was it the ministry's intention to have a list of businesses the bylaw could not apply to, or did a bylaw first have to be passed and the ministry could then say, "Sorry, that bylaw does not apply"?

Mr. Rotenberg: Mr. Chairman, the purpose of subsection 2(8) really is the restraint clause, which I think the delegation has asked for.

It is not the minister's intention to put out a list at this point. It is in effect the power of the minister, which is by regulation of the power of the cabinet, to correct any abuse which may happen out there, simply by an order in council, of having to go back and change the law.

Mr. MacQuarrie: Applying to specific bylaws after they have been passed.

Mr. Rotenberg: That is right. That section is the protection section for the public against the possible abuse by council.

Mr. Brandt: To meet the concerns of the delegation, the class of businesses under subsection 2(8) could effectively be manufacturing, as an example.

12:40 p.m.

Mr. Rotenberg: Mr. Brandt, with respect, the point they have made about manufacturing which doesn't have any dealings with the public, I think we are, as I have indicated, committed to giving some very serious consideration to changing the definition to get away from that, which is something that was not intended. Section 28 is to cover abuse.

Mr. MacQuarrie: Can section 28 be reworked so that the regulatory aspects the delegation referred to can be cleared up there by the ministry, in the first instance, listing the businesses to which a bylaw should not apply?

Mr. Rotenberg: No, that is not our intention. Whenever we rewrite section 1 within that definition we do want to make exemptions, because if we are going to do that it should be in the definition section.

Mr. MacQuarrie: I can see the interpretation that the delegation placed on that section, that a bylaw has to be in place first and then the application for exemption moved. But I can also read this as allowing the Lieutenant Governor to make up a list.

Mr. Rotenberg: It would allow the Lieutenant Governor in Council to make up a list if he desires, but it is not the intention of the ministry-- Anything we are going to do in advance as this legislation goes through--

Mr. MacQuarrie: Could the preparation of such a list not accommodate some of the concerns of the delegation?

Mr. Breaugh: To apply to the principle of the bill.

Mr. Rotenberg: To apply to the principle of the bill, that is the point. If I agree with Mr. Breaugh, I must be wrong.

Mr. MacQuarrie: I do not see that there is any real conflict, if he says manufacturing is going to be exempt--

Mr. Rotenberg: Mr. MacQuarrie, with respect, if the major manufacturers who have no dealings with the public are not to be subject to the act, it should be in the definition section, not in the regulation section. That is our feeling. We want to be up front with what we are going to do.

Mr. MacQuarrie: Well, it depends how far up front you want to be.

Mr. Rotenberg: That is not the problem. Somebody has a list today. Some municipalities want to be allowed to license chimneysweepers.

Mr. MacQuarrie: I just thought I saw a way that some of their concerns could be accommodated.

Mr. Chairman: Mr. Elston, do you wish to continue?

Mr. Elston: Just a couple of brief comments--much briefer than yours, Andy--with respect to the competency questions.

I gather the feeling from the presentation that your concern is that the individual and his abilities ought to be left out of the licensing process altogether no matter what line of work he is in. Is that fair--that any sort of competency, if there is a competency at all, should be dealing with whether or not the

physical facility that is there to house the operation is suitable to meet the standards that are required, and that the individual ought to be out of that altogether?

Mr. Stewart: Yes.

Mr. Elston: The parliamentary assistant wants to comment on that.

Mr. Rotenberg: Yes, but I think I should comment all at once if I can.

Mr. Elston: That would be fine, just as long as you make a stab at that one.

The other is with respect to insuring premises. I have a feeling I know that the idea behind that section is the licensing, the process that would require insurance on buildings. I know of a number of situations where buildings have been left vacant and virtually uninsured, that problems develop and that there is no way for anyone to have recourse against the person who virtually had abandoned the facility.

Can you offer a suggestion, perhaps, or maybe your thinking on this in your list of amendments you are going to be thinking up? Can you suggest a way that the municipalities might deal with that problem with respect to insurance? I am almost positive that any business person does not want, knowingly, to underinsure himself. It is not good business sense. But how do we deal with the situation where the business has gone?

Mr. Stewart: I guess our feeling with insurance was that perhaps it would be used to require a tremendous amount of parts liability insurance, that type of thing.

Mr. Elston: Or even occupier's liability.

Mr. Stewart: Right. That could pose a real problem for small business: it could almost price them out of business with the insurance premiums. We thought maybe some guidelines could be placed in here as to the nature of the insurance that the government intends in the purview of this bill and also maybe some upper limits, again, some guidance.

Otherwise, I can see a potential of maybe a municipality going off on a real toot and saying, "Well, you have to have \$8 million of product-liability insurance." A company tries to get it and if it cannot afford it, it has to go out of business.

I see your point, too. There is a role for insurance in there. It is just to get the right role.

Mr. Simon: The bill does not solve the concern that you have.

Mr. Elston: I agree. That is the point that I would like some thought on, perhaps, when you are going through it. I go along with others that there are areas of this bill that are

particularly grey, and those are the ones that we really should try to ferret out.

Mr. Simon: I am not sure that can be solved by this type of bill. This Bill contemplates that there be an ongoing business and that there be an insurance requirement during the period of that business. If the guy decides to pack up his business, leave the building and cancel his insurance, I am just not sure that you can solve it through this kind of bill unless you have--

Mr. Elston: No, but if he is packing up--

Mr. Simon: --some kind of a bond that he was supposed to post at the beginning of the business which would suggest some period of time.

Mr. Elston: I am not really looking at the particular situation where the entire company goes out of business. We have in our area some situations where a parent firm is withdrawing and virtually abandoning the building. Those are concerns. Also, in our area there is a company which is left hanging while the guy goes on with another enterprise. Those are the types of situations which do cause some problems.

As time is going on, Mr. Chairman, I will move right here to the parliamentary assistant.

Mr. Chairman: Well, Mr. Mitchell had a question.

Mr. Mitchell: My question was basically asked by Mr. Elston, with regard to the proposed amendments that Mr. Rotenberg has mentioned and the reaction of the witnesses, Mr. Chairman. So I am quite satisfied.

Mr. Rotenberg: With respect, to Mr. Breaugh, I will try to be reasonably brief. I would like to make some comments which may not be in order because I have made notes as we have gone along. I think there is a matter of philosophy in the bill where there may be a difference between ourselves and the delegation, with respect, not totally understanding what the bill is all about.

If you look at page 3, part of their main thrust is that, "It has not been demonstrated to us that there is any evidence requiring the council of every municipality having the power to license, regulate and govern every business." I think we all understand what permissive legislation is. Permissive legislation in effect says a municipality may, if they desire, license businesses.

We now have, really, 60-odd permissive clauses in the Municipal Licensing Act. It is not a case of authority being transferred, as it has been suggested. Within what goes on now the municipalities have all this power, but many of them do not choose to use it. We feel from everything we have had that most municipalities will not necessarily choose to use this power.

There is nothing that requires a municipality to get into the licensing business if they do not want to. I think that should

be made very clear. I think I understand--I have been reading your brief--that it may not be really quite that way.

As far as competency tests are concerned, maybe the bill can be read differently from how we have written it or have intended to do it. Let us discuss the plumber, for instance. There is a requirement for a plumber to get a provincial licence of competency. If he has that licence when he comes for a municipal licence he does not have to take another test.

The problem is that the provincial licence once one gets it at age 25, some 10 or 20 or 30 years later the province does not require that you do anything further. We have found, and this is at the request of municipalities who are dealing with complaints every day, that if that plumber, for whatever reason, does not keep up or has lost his skill or whatever and is no longer doing a job, there are complaints against him. What we want to be able to do, in effect, is to require that plumber to demonstrate his competency again within the provincial regulations.

It is not that we are going to set up more stringent regulations for the plumber, electrician or whoever. It is to see that he is still competent under the licence that he has. Maybe the provincial, or in some cases federal, regulations, do not require a man to continue his competency.

If the municipality in the whole purpose of licensing is to say to the public out there, "This man you are dealing with has a provincial licence, we know who he is, where he is and that he meets the regulations for competency," it can say that when he gets the licence. But 10 or 15 years later if there is a complaint against him, there should be power to have the man re-examined, where there is not that power anywhere else.

As far as the requiring of insurance is concerned, this is basically not to insure the building or equipment, although maybe the act technically says that. It is the power to require a person dealing with the public to have insurance to protect the public. Basically it is financial responsibility as we have in auto insurance--liability protection, public liability protection and so on.

12:50 p.m.

You mentioned product liability--that a municipality might require \$8 million. First of all, anything that is totally unreasonable could be turned back by the courts, but I think you are aware, as businessmen, that the difference between \$500,000 product liability and \$8 million product liability in most cases is a matter of maybe \$15 or \$20 a year premium, because liability premiums go down very greatly, as anyone who buys automobile insurance knows. The difference between \$100,000 and \$1 million is very small.

So I don't think requiring that kind is a prohibition, but there certainly has to be the right of a municipality to require financial responsibility and require the public to be protected from products' liability. We do not want to get into anything else.

Fees have been mentioned, and Mr. Brandt talked about harrassment in building up the fee. In most of the legislation now there is no fee limitation. The municipalities can administer a fee if they want to, but they are not doing it.

The suggestion that municipalities would try to charge a lot of fees and use this as a revenue source, to build up costs and so on, has not been demonstrated by the present act. All 834 municipalities have the power to license and, in most cases, no limitation on fees, and they do not put it in. Many of the requests for licensing within the municipality come from local businessmen who really want to have their businesses regulated to keep out the fly-by-nights, to keep out people who might come in and give their businesses a bad name, to make sure businesses are regulated.

As to harassment, I don't think the bill contemplates that you can build up costs by sending in an inspector every week. Something we maybe should be looking at as far as the cost recovery is concerned is whether cost recovery should be for the cost of the initial clerical work of issuing the licence, and the clerical work of an examination, if that is necessary. But whether it should be for being able to charge in the cost of the building inspector, or of the Hydro inspector, and those other people, is something we should have to look at.

I share the concern of the delegation that, even though it has not happened in the past, there should be something more in words, if we do not think the act provides for it, to make sure the municipality does not use this act as a revenue source. It is not our intention to use the act to build up costs.

That brings us to the next objection of the delegation, that this bill could be used to prohibit businesses or prohibit competition, to prohibit other people coming in. There is no question that any regulation for a business has to be the same for everybody in the business. There is no question that the bill, with the exception of adult entertainment and taxicabs, specifically limits monopoly powers.

There is no question that the bill does not allow municipalities to use this for restraint of trade, or use it to build up fees that are prohibitive. If the bill is not explicit enough, we may have to make it a little more explicit. But even the way the bill is written, in my opinion, and in our solicitor's opinion, any municipality that tried to prohibit or use monopoly powers would be quickly turned back by the courts. I think the minister, because it is certainly the intention of the act, would, as he has the power to, correct abuses under that section of the act.

Someone mentioned class or classes of business. This is something that is many acts at the present. In other words, you do not want to say you can just license restaurants. You may want to have different regulations, as we do, for restaurants that serve liquor and those that don't. You may want different regulations for the fast-food outlets and for the other outlets. You may, as Mr. Mitchell said, have different regulations for gas bars or for

service stations. You may have different regulations for retail stores and for the flea markets or for the guys Mr. Breaugh mentioned yesterday, who come into a hotel and sell leather coats on a weekend and disappear. These are all retail sales, but there are classes within the retail sales that should be different. Maybe that is why municipalities can have different regulations for different classes within the same generality. I think I have covered that point.

We have the idea that by proliferation of regulations a municipality may, at a whim, bring in a regulation to license, like certain ministries, and it is on the books forever. It has not been commented on today or yesterday, but we put a new clause in this act which, in effect, is a sunset clause, which says that a municipality must, every five years, renew its licensing bylaw. It must be renewed every five years, as under the Planning Act. So if you decide to license some sort of exotic business that came in and five years later is no longer required, that would disappear from the Municipal Act.

We have put the sunset provision, which I think all parties agree is generally a good thing, into this section so that municipalities have a mandatory review. That is, they can renew it, but they must have a mandatory review.

To get back the initial point I want to make, I understand CMA's point of view--it is somewhat a fear of the unknown--but I would like to indicate to that group that this is not such a major expansion of power. It is a rationalization of the present powers giving the municipality somewhat more discretionary powers, but not that much different from those in many sections of the present Municipal Act which, until now, have not been abused.

Many of the points the association has made are well taken. As indicated, we will be reviewing one or two--the idea of regulations' lists we will not be accepting--but we will be reviewing most of this in more detail. After we have heard all the deputations, our ministry will take some time to review all the deputations before we come back with possible recommendations in the clause by clause.

Mr. Brandt: Did you cover the point about the delegation of powers on the part of the municipality?

Mr. Rotenberg: No, I didn't. As far as the passing of bylaws is concerned, there will be no delegation of powers. It must be done by council. There will be no more delegation to the police commission or other things, although Metro has a special act. It can delegate the enforcement to the licensing commission, but bylaws must still be passed by the Metropolitan council.

You can delegate the hearing process to a committee, which may be made up of council members or other people. That is a hearing that is an appeal from a refusal or revoking of a licence that is under the Statutory Powers Procedure Act and, therefore, should not necessarily be the whole council. That can be delegated. The actual passing of a bylaw cannot be delegated. That must only be done by the municipal council.

Mr. Elston: Mr. Chairman, for the assistance of the people who will come and make representations, will you be circulating your proposed amendments to them prior to the cutoff date of their making their proposals to you? It seems a waste of time for them to sit down and draft proposed amendments, if your amendments will answer a number of their concerns. That is one thing.

Mr. Rotenberg: I have tried to indicate some of the things we have been considering. Written representations to this committee as such, I understand, will close at the end of next week. However, we have had other bills. The ministry, and I assume the committee, will always be prepared to receive written submissions from any group that wanted to make a submission. We certainly are open to any written submissions.

After we have finished our hearings next week, it will take us some period of time before we view and understand and decide what recommendations we are going to make. The definition section is probably the greatest concern of the CMA. We will decide what we are going to do and we will circulate it to the committee. We might possibly call them and say: "This is what we are thinking of doing. Do you have a response?" That is something we would do on a voluntary basis to approach major concerns. It would not be within the time frame of these two weeks of the hearings.

Mr. Elston: We are going to have a substantial amount of time passing between now and clause by clause.

Mr. Rotenberg: We are set up by the House to have only these two weeks. Therefore, we cannot get back to this bill until October.

Mr. MacDonald: Presumably then the end of next week is the deadline for any further submissions?

Mr. Rotenberg: That is a committee decision, not a ministry decision. We will take submissions at any time from anybody.

Mr. MacDonald: It seems to me you would have a week to refine anything you want. But the people who come in next week would have 24 hours.

Mr. Rotenberg: These are submissions to the committee on public hearings. I think the committee, like any other, will take written submissions when we get to clause by clause, as we did in the Planning Act. I think submissions came in on the last day.

Mr. Breaugh: Would it be reasonable to assume that the committee would be prepared to accept any submissions from anybody up until the point where we begin the clause by clause--

Mr. Rotenberg: Or even during clause by clause. If something comes up, we can take further written submissions. It has been a committee practice not to have further presentations.

Mr. MacDonald: I think the great value of the submission

today was that you were coming to grips with what the Board of Trade of Metropolitan Toronto said yesterday, that we should have guidelines. When you asked the representatives what the guidelines were, they had not given any thought to it, and they copped out and said, "We are not draftsmen." Well, you can be draftsmen. Your draft may be what gets into the bill.

Mr. Rotenberg: I think I will answer your question this way. We have a few very basic principles in this bill that we feel we want to stick to. Within those, to implement those principles, we are quite open to suggestions from other people on their particular concerns.

We are not the fount of all knowledge. Even when we get back, as Mr. Epp would know and Mr. Breaugh, as we said in the Planning Act--even when we got down to having amendments recommended by the ministry, and someone came in and said, "Wait a minute, you did it not badly but here is a better way," we reopened a clause and put in a different amendment, having been convinced there was a better way to do it. We are not married to details.

The Planning Act indicated the position of the ministry. We are quite open to anyone who can show us a better way of doing it and a better amendment. If we get to the clause by clause and we bring something forward and it is adopted by committee and CMA says, "Wait a minute, here is another way," I am quite prepared to look at something else.

We are out to get good legislation. We are not out to adopt particular details just because this is how we presented it in detail. We are not married to it in any way.

Mr. Elston: I have another question. It may not turn out to be quick, I don't know. It is this. If you are going to give the municipalities the right to review the person's ability with respect to obtaining a licence through a provincial authority at one time or another, have you had representations from all those people--auto mechanics, body people, plumbers, electricians? Have you had input from those people as to how they feel about being quizzed on their ability some five or 10 years after they received their initial licensing from the provincial government?

It seems to me those people might not necessarily be aware that this bill covers their competency some five or 10 years after they initially receive their licence.

1 p.m.

Mr. Rotenberg: One group that came to us were the electrical contractors. They wanted this kind of a thing in the act to protect the good name of their industry.

We have to give a certain amount of discretion to the municipality because these are businessmen in their own community. They are not going to bring them in every year and harass them. Up until now for those things it has been by complaint. If there was a complaint against a particular contractor and it seemed to be

valid that he was not competent, and if maybe there was more than one complaint, then the municipality will say, "It is time this guy went back and took his examination or one similar to the provincial qualifications." I think you have to have that in there.

To say it can be a minimum of every five or every 10 years, I think there are certain things you have to leave, at least in the initial time, to the good sense of municipality to administer properly. If there is abuse, we can catch it or change something, but--

Mr. Elston: What I am really suggesting is why don't you do that under the provincial statutory requirement for them to be licensed? If they have to get a licence in the first place, why aren't they required to come back and update that under that legislation rather than allowing the municipalities to update a provincial licence?

Mr. Rotenberg: You are a lawyer, I believe.

Mr. Elston: Oh, yes.

Mr. Rotenberg: The Law Society of Upper Canada does not require you to go back every so often and be re-examined, but if you were disciplined or something went wrong, then the law society may come in and question you.

Mr. Elston: But we are required under the terms and provisions of certain insurance requirements to take updating courses and things like that. That is one way of handling it.

What I am saying is, to make sure everybody knows and understands their situation, why don't you require as a condition of holding the licence that they come back under that legislation rather than having them be subject to an interview by somebody set up by the municipality? That is my concern. Then you do get into a situation that these gentlemen have commented on, uniformity of requirements and things like that.

Mr. Rotenberg: Are you saying that at the discretion of council, if they are to be re-examined they should be examined again by the provincial group, or are you saying that everybody has to have a periodic re-examination?

Mr. Epp: Use the plumber one as your example.

Mr. Rotenberg: Are you saying the plumbers should have to come back to Colleges and Universities and take their qualification test every five or 10 years? Is that what you are trying to say?

Mr. Stewart: Under the provincial act--

Mr. Rotenberg: We are the government at this point, but it is a different ministry which looks at these things a little bit differently. There is a lot more to qualifications than just having a municipal licence.

Mr. Elston: It seems to me that what we are doing is regulating those individuals through the Ministry of Municipal Affairs and Housing when actually they fall under the Ministry of Consumer and Commercial Relations, and somehow--

Mr. Rotenberg: Actually it is the Ministry of Colleges and Universities.

Mr. Elston: Colleges and Universities, the apprenticeship programs or whatever, but it seems to me that what we may be doing is putting those people in a situation where they do not even understand that they may be subject to review of a municipality as a condition of holding their licence, and they may not even twig, as these people did not twig to this bill and its effect on them initially.

We may not hear from them, but there may be a number of people who are concerned, even though I understand about the electrical contractors. This would fall to the plumbers. It would fall to almost every sort of person, I suppose even to an appliance repairman or something.

Mr. Rotenberg: It is a question really of philosophy, and it gets back to the problem of harassment. Do you say that those people out there who are qualified to do a business are subject to periodic examination, or do you say only those cases where there has been some demonstration of incompetency should their competency be reviewed? That is a philosophical matter, and we are opting for the second rather than the first.

Mr. Elston: No, that has nothing to do with it. My comments are directed more to the fact that if you are going to regulate people you should continue that regulation under the same initial regulatory authority of the province, and you do not purport to switch the onus on to another body entirely.

What you are doing is saying, "Okay, a municipality can say that you are incompetent and not license your business locally," which I am saying could then lead to having that man move next door or perhaps out of the town of Wingham in my area, into the township of Morris and then get a licence there, but he would still remain incompetent. Okay?

My suggestion is that you are not dealing effectively with eliminating the problem of the besmirching of the good name of the Electrical Contractors Association of Ontario. What you are doing is merely forcing that person to go to another area to shop.

I am saying that, if you are going to have a requirement that those people found to be incompetent should not be allowed to be in the business for the fair name of the association, it should be administered through the initial legislative--

Mr. Rotenberg: What you are saying is that it is not an automatic (inaudible) examination.

Mr. Elston: No, I am not talking about that. Where is the legislative authority you had in the first place?

Mr. Rotenberg: That is, where, let's say, the plumber is suspected of being incompetent or of having lost competency, and the municipality refers him back to the Ministry of Colleges and Universities for re-examination, rather than the municipality doing it. Is that what you are saying?

Mr. Elston: No, if that is the complaint process, that is how it should be. I just don't think we should have the municipalities making the final determination on the ability of the person.

It seems to me you cannot, in the Ministry of Municipal Affairs and Housing, say I cannot become an electrician. It is the other ministry that does that. What you are now saying, though, is that the municipality will be able to say you are not competent five years down the road.

Getting away from how often you review that person's competence or anything like that, all I am saying is that it is a lot more sure for that individual if he continues to be administered under the authority of the Ministry of Colleges and Universities.

Mr. Rotenberg: The analogy is that the Ministry of Transportation and Communications sets out the regulations for driving, and it is the police who enforce them if someone is an incompetent driver.

Mr. Elston: No, that's not right. With the one exception of the Highway Traffic Amendment Act, where the police take away a person's licence for 12 hours, all the assessment of the ability of a person to drive is done in the courts, though it is administered under the Highway Traffic Act or the Criminal Code. It is a very sure thing.

Mr. Rotenberg: You have raised an interesting point. We certainly will consider it. I can't give you an answer to the point now, but I can see the objection you raise. We shall have to review it on the basis of whether we are getting a more convoluted process by going somewhere else. There has been some of this in place already, and it has not been abused, so we will have to look at it.

Mr. MacQuarrie: The whole question of a municipality determining the competence of a tradesman who qualifies under the provincial standards is, I think, very much open to question. The fact that a municipality may require that tradesman to take out a municipal licence is one thing, but to determine his competence is another.

Taking a number of actual situations, for example, electrical contractors, some of the senior electrical contractors have been electricians for a good many years, but most of them have gone into managerial positions in their contracting firm or limited company. They are employing a number of either master electricians or journeymen in their firm. If the licensing of the firm is dependent on the continued competence of the senior men, you are in trouble.

Another concern is master plumbers. There was a time when master plumbers would not install plumbing equipment or supplies obtained from people other than themselves. So some municipalities said: "If you can find someone competent to put in the plumbing, we'll issue him a plumber's licence. He can put in the plumbing, and, if it satisfies our plumbing inspection, fine." The criterion that the municipalities' plumbing or electrical inspectors carried out was in the inspection.

Mr. Hetherington: I was just going to say I agree 100 per cent with this point of view. It seems to me only logical that the licensing authority should be the one that relicenses.

Mr. Elston: Then you have consistency.

Mr. Brandt: As well as an overlapping responsibility.

Mr. Elston: What happens is that, if you do not get your licence in one municipality, you go next door. It does not deal with the problem that was initially raised.

Mr. Epp: The other problem is that, if you get a licence provincially, what happens if the municipality figures you simply do not qualify? What kinds of standards is it using?

Mr. Chairman: That is what Mr. Elston said, they move across municipal boundaries.

I will throw this out. Is there a difference between the large municipality and the small municipality so far as dumping over licensing from the province to small municipality is concerned? In other words, Mr. Elston threw out about the municipal boundary.

Mr. Breaugh: That will happen anywhere.

Mr. Chairman: Let us take the two townships. If someone does a lousy job in this township and they yanked his licence, he just moves across the road.

Mr. Rotenberg: But he still cannot do business in the first township if he is not licensed.

Mr. Chairman: Fine, but he probably already acts in five different townships so he just excludes his business out of that one; he refers the business in that township to his brother-in-law and keeps going in these other four townships.

Mr. Breaugh: I think the problem, Mr. Chairman, is that municipalities used to say--or I remember them saying--that if there is somebody running a business and everybody in town agrees that this guy is bad, there is nothing they can do about it. That was the initial idea. This bill has certainly gone a long way away from a municipality being able to do that.

I am not sure that any municipality in Ontario is competent to make those assessments. Second, if you put this in place, and you make that requirement, has Colleges and Universities any lead

time to set up programs whereby they could do the update and get the ticket; what is the ticket?

It points out an area where government is going to have to take another look at that because I understand what the original premise was from the municipalities asking for some assistance in clarifying what they could do if a rotten business was going in their town.

But you go a long way away from that one. I think your intention is certainly not stated in the bill, or not my understanding of the original problem.

Mr. Chairman: Thank you. Gentlemen, we have held you for a long time. One of your gentlemen had to leave, presumably for an appointment; but the fact that we did hold you for this length of time, and had this long-ranging discussion, shows the value--you are obviously being treated as very responsible people whose input we want. Therefore, we do thank you for staying this long to form the foundation of the committee's thinking on this.

Thank you very much for appearing before us.

We shall adjourn until tomorrow morning at 10 a. m. when we will have representatives from the three cities, Kitchener, Windsor and Cambridge, appearing before us.

The committee adjourned at 1:13 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

MUNICIPAL LICENSING ACT

THURSDAY, JULY 15, 1982

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breaugh, M. J. (Oshawa NDP)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Epp, H. A. (Waterloo North L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Eakins, J. F. (Victoria-Haliburton L) for Mr. Elston
MacDonald, D. C. (York South NDP) for Mr. Swart

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of
Municipal Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

From the Ministry of Municipal Affairs and Housing:

Noble, W., Adviser, Functions Policy Section, Local Government
Organization Branch
Synnowich, M. A., Manager, Functions Policy Section, Local
Government Organization Branch
Tomlinson, J., Solicitor, Legal Branch

Witnesses:

From the City of Kitchener:

Pritchard, R. W., Commissioner of General Services
Wallace, J., City Solicitor

From the City of Windsor:

Kellerman, A. S., City Solicitor

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, July 15, 1982

The committee met at 10:08 a.m. in room 151.

MUNICIPAL LICENSING ACT
(continued)

Resuming consideration of Bill 11, An Act to provide for the Licensing of Businesses by Municipalities.

Mr. Chairman: We have two witnesses this morning, Mr. J. Wallace, the city solicitor from Kitchener, and Mr. A. S. Kellerman, the solicitor for the city of Windsor. Mr. R. W. Pritchard, the commissioner of general services from Kitchener, is here with Mr. Wallace.

The clerk will give you a blue binder containing a submission to our committee from Kitchener. You might mark that as exhibit 6.

I leave it to the committee and the solicitors as to how they want to handle this. They are both sitting at the end table. I think they have not dissimilar thoughts on the subject. They have both been here before us on the Windsor bill, Pr6; so perhaps they might work in tandem as you people see fit.

Mr. Wallace, would you carry on, since you are first and you have less to say on Bill Pr6 than Mr. Kellerman did? Now you lead off and maybe you will have more to say on this.

10:10 a.m.

Mr. Wallace: Mr. Chairman, if you look at the brief, I think I outlined on the very page the point that is of main concern in Bill 11 with respect to the general licensing provisions, and that is the licensing of hawkers and pedlars.

Without reading exactly what I have in my brief to you, can I just say that some time ago, I guess a number of years ago, it was evident to the citizens and the council of Kitchener that they did have a problem with a number of hawkers and pedlars who came in from out of town and, you might say, had one-day or two-day sales, skimmed the cream off the local business and made it difficult for local businessmen who pay business taxes, have establishments and have continuing and ongoing responsibilities within the community.

They obtained ministerial approval a number of years ago to increase the nonresident licence fee to \$150. I think that is pretty rare in Ontario and that is what they charge nonresidents. However, it has been found, and we certainly at the city have been sensitive to the pressure, that there is an ongoing and increasing number of nonresident hawkers and pedlars arriving in the city,

for instance in a hotel, and putting on a giant sale in the ballroom of a hotel and then leaving, having paid the \$150. That is compared with the overhead of the local merchants who may have the same merchandise but it has built in all the costs of business tax and real property tax and whatever.

They feel that is a little unfair; so there have been certain representations made that this should be a higher fee. In that connection, the actual resolution passed by council in dealing with Bill 157 stated:

"That the Honourable Claude F. Bennett, Minister of Municipal Affairs and Housing, be advised of the following comments by Kitchener city council relative to Bill 157"--the predecessor of the bill you are considering--"An act to provide for the Licensing of Businesses by Municipalities:

"(1) That we endorse the comments by the Kitchener Chamber of Commerce as contained in our letter dated December 3, 1981;

"(2) That the province of Ontario be asked to examine the length of term during which a hawker's and pedlar's licence shall be valid;

"(3) That provision be made to allow municipalities to charge business tax on the selling space occupied by hawkers and pedlars."

The letter from the chamber of commerce is attached. It is addressed to the clerk and is dated December 3, 1981:

"The retail committee of the Kitchener Chamber of Commerce wishes to make its concern known with regard to Bill 157.

"We feel that the fee for hawkers and pedlars should reflect the same terms as a daily business.

"It is not enough for the province of Ontario to allow a municipality to have the power to charge a certain amount. The province should be more concerned about the uniformity across the province and remember the mobility of today and close proximity of business areas, and therefore legislate an amount payable in keeping with today's costs.

"True costs should reflect all costs, not just costs of servicing the licensee. He still needs roads and normal city services in order to enter the city to do business.

"We feel the fee presently charged (\$150 for a nonresident) is too low and should be from \$100-\$1,000 depending on the volume of business done.

"Your attention in this regard would be appreciated."

In the second part of the resolution, we examine the length of term during which a hawker's and pedlar's licence shall be valid; and I think this is a reflection of what has been happening lately. Originally when we charged for a hawker's and pedlar's

licence, a chap came in and he was quite happy to pay \$150, get his licence and hold his single sale usually, and then it was over with.

Now this caused the same general concern from the businessmen about this particular sale, but they had the \$150 licence fee and that is what had been passed. More recently what has happened, and to a certain extent it is the custom of the municipality and it had been traditional with licences, is that the licences had not been issued for one day; they had been issued generally for the \$150 for the year.

That did not pose a problem because they usually came in, had one sale and were gone on to the next town. What has happened now--apparently they have done so well on these individual sales--is they have been coming back at regular intervals on the same licence.

To a certain extent, I suppose we could do this anyway, but we think this committee should be aware of it, there is something to be said for limiting hours or limiting these licences to 24 hours or several days or whatever and allowing the municipality quite a bit of leeway in restricting the length of time these licences are valid--certainly, I think, no less than a day but at least being able to limit it to a day.

The third item of the resolution said, "That provision be made to allow municipalities to charge business tax on the selling space occupied by hawkers and pedlars." I think that is the main difficulty and the main item that sticks in the craw of the local businessmen who had made representations to council, that they are paying substantial business tax. Certainly, with inflation, the tax has been going up regularly and they feel they are put in a difficult position because of that vis-à-vis these hawkers and pedlars who have come in.

The process has been that the hawkers and pedlars quite often come to a local hotel or motel, rent a large room, sell the items and are gone. I think what was envisaged in this part of the resolution was the suggestion that perhaps a business tax could be assessed on the space used by the hawker and pedlar and somehow could be imposed through the hotel. I think this is very difficult. Although the committee might want to think about that, I see personally that is a bit of a problem as to how you deal with that situation in addition to or instead of a licence fee.

However, they see the problem in terms of the business tax they have to pay--that is, the local merchants have to pay and the hawkers and pedlars do not--and they want to see, I guess, some equity in at least a portion of the business tax for the space used to be charged on the hawker and pedlar. Of course, that certainly does not happen if he is in a hotel or motel over a weekend.

I think that is pretty well the general submission of the council with respect to your Bill 11 in general and with respect to hawkers and pedlars.

The other part of the brief really deals with Bill 11 when you consider the private bill the city has applied for with respect to amusement arcades.

The committee may recall that at the discussion dealing with amusement arcades and the the city of Windsor bill there was some hesitation for the committee to approve the city of Windsor bill or reject it or take any definitive move on it until consideration had been made of Bill 11 by this committee and what kind of provisions were put in Bill 11 to allow municipalities to legislate with respect to amusement arcades.

The submission before you today is that special provision should be made to deal with existing and future arcades by putting a special section in Bill 11, just as you have for adult entertainment parlours and body-rub parlours.

I have attached a copy of our previous submission to this committee to the back of the submission that is before you today, and a copy of the private bill, Bill 33, which will be coming before you.

The main objection, as I detected it the last time, was that you have a problem with existing businesses. Perhaps for future businesses zoning bylaws can do the trick; we can zone them into different areas and keep them away from schools, because as you know the board of education had supported doing something about keeping them away from schools.

I gather North York, for instance, has zoned them into industrial areas. And I gather that Metro Toronto had zoned them south of the Gardiner Expressway, although there was never an OMB hearing with respect to that issue. One wonders what the good planning considerations are for zoning amusement arcades to industrial areas, agricultural areas and so on.

As I have said in the brief, that kind of move is transparent. The proper place for amusement arcades is in commercial areas. There is no getting away from that. The problem is that they are causing problems for the schools, and they are too close to the schools in many instances. Municipalities should be given the power to discriminate, even if it affects existing businesses, to eliminate that competition for the attention of the children when it is too close to a school.

We have asked for the power to regulate their location in the private bill application, to discriminate with respect to the age of customers and of operators and to regulate the number of machines. We should have that power, it is submitted; and if it takes an amendment to Bill 11 to do that, I ask this committee to consider that.

I had hoped to have it with me today, and I have not had an opportunity to pick it up this morning, but I understand the municipality of Metropolitan Toronto has passed a resolution seeking support from other municipalities to convince the provincial government to pass general legislation to regulate amusement arcades in far more stringent terms than what is being

asked for in both the city of Windsor bill and the city of Kitchener bill.

Mr. Rotenberg: We have a photocopy of that Metro resolution. If the committee wants, we can get copies made for everyone. Do you not have a copy, Mr. Wallace?

Mr. Wallace: No, I do not have a copy of that. I was speaking to the legal department of Metro Toronto this morning. I understand that the Metropolitan Toronto Licensing Commission will be submitting a brief to you, I believe next Thursday. But, in any case, they will be supplying that material to you and making a submission with respect to--

Mr. Rotenberg: We will have copies of that Metro resolution shortly.

Mr. Chairman: The clerk is getting that right now. We will have it for you.

Mr. Wallace: Without belabouring the issue of video game arcades, I just think they are a fascination for the young and they are a fascination for the older people. The important thing that has been stressed to us in Kitchener, and I am certain in Windsor, is that when they are too close to schools, they do cause a problem for the attendance of the children at schools, and we think that the only way to deal with it is to do something about restricting the location of these arcades in respect to the location of the schools.

I hope the committee will see fit to make that amendment, however it wishes to do it, either by granting the individual private applications made by Windsor, Kitchener or whoever, or by amending the general legislation, just as has been done with respect to adult entertainment and body-rub parlours. That is all I can say.

Mr. Chairman: You are leaving it up to the government as to whether it carries on with the Kitchener and Windsor bills vis-à-vis arcades, or whether the general legislation be incorporated into Bill 11.

Mr. Wallace: What underlines the concern there is the fact that Metro Toronto has passed the bill to ask for general legislation. We have found it has been such a problem that it has provoked us to bring a private application. If anything can underline the concern, I think the fact that we have gone out of our way to apply for private legislation, just as Windsor has, stresses the concern that is evident in the community about amusement arcades and primarily how to deal with existing ones.

Mr. Chairman: Exactly. I was going to bring that up. Excuse me, committee. This comes back to the Windsor bill that was before us. There was quite a bit of discussion about the retroactivity aspect of what you are asking for and nonconforming existing uses if it were carried under the Planning Act. Do either of the solicitors want to expand on that? It is a continuation of what you dealt with before. I am anticipating that as a problem

here, the way it was in front of this committee on the Windsor bill.

Mr. MacDonald: Mr. Chairman, can I ask a question?

Mr. Chairman: Yes.

Mr. MacDonald: Can we resolve the issue of whether it should be in general legislation or whether we should pursue the rather fragmented approach of individual bills? My own view is that this problem is sufficiently prevalent now that it should be dealt with in general legislation to relieve municipalities of the necessity of coming in with private bills.

Mr. Rotenberg: I would agree with Mr. MacDonald that whatever we do, or if we do anything, it should be in general legislation, without committing the government at this stage to doing anything about this, because I will have some comments when it is my turn to comment on what has been said.

I think we discussed this in connection with several private bills before us, other than the two that are here today, that anything about video game arcades should be done in general legislation. I hope the committee will agree with that.

Mr. Chairman: Gentlemen, do you want to address yourselves to that retroactivity and existing nonconforming use situation?

Mr. Wallace: Yes. The last words you used were "existing nonconforming use." I think with the zoning problem we do have that. We have had them come into commercial areas where we do not really have regulations to say they cannot be there. We have allowed them into areas where there are places of amusement, as they are called. They have come in as adjuncts now to movie houses. They are right next door; they have adjoining rooms. They are in a lot of businesses on the main street. Where people have gone out of business, there are vacant stores and in some situations they have moved in there. Granted, that is in the commercial area. Some people are concerned about that, but that is really not the issue with respect to schools, and I think that is the prime concern that has been stressed by the boards of education to the city.

As to legal nonconforming use, I think the chap who has an existing machine is perfectly within his rights to say: "You are not going to zone me out of here now. I have been here a couple of years. Maybe I have been here only one week, but I am here when the zoning bylaw comes into effect. There is nothing you can do about it." I think he is correct. If he is in the commercial zone and we have no restrictions on them, fine.

We can do something about passing a zoning bylaw. We can pass a zoning bylaw and put them all in an industrial area if we just want to use a sort of sledgehammer approach. If that is what is decided, the problem is that you put them all in an industrial area and you are really not addressing the human nature involved. The machines are fun to play for young and old and they probably

should be in a commercial area. I think the realistic approach is to say, "You don't put these out of the commercial area because they are a touchy subject." You do deal with them and you do zone them.

10:30 a.m.

To try to zone them as North York has, as I understand, in industrial areas, presumably that was approved and nobody objected. Maybe all the arcades were already in place and it really did not affect the existing businesses. They knew they were home-free, you might say. They already had their market patterns; so it did not bother them. So let the city of North York pass the zoning bylaw, because it really does not affect the existing businesses.

If somebody had objected, though, what are the planning considerations for putting these things in industrial areas or wherever you want to put them? I think it is a bit phoney to say it is good planning to put them in industrial areas. It's not planning at all. What is industrial about that or what is agricultural about that? There is truly a commercial use and they should be in commercial areas, but they should be regulated.

If you rely only on the zoning aspect of it, that is the problem you have. If you do have a hearing to submit before the Ontario Municipal Board, they are going to say: "What are your planning considerations for this? We don't care about the difficulty about the children." Maybe it is good planning to have them in the commercial areas as opposed to the industrial areas, because you do not want a lot of teenagers going to the remote industrial areas. A lot of industrial owners, and I think this is true in Scarborough, do not like after-hours pedestrian traffic in industrial areas and the police do not like it, because if there is a lot of traffic in an industrial area after hours it is very difficult to police for break-ins and so on. So if you put another kind of use in an industrial area, you create other kinds of problems.

I think the analysis of it from a planning point of view is that you put it in a commercial area because it is a commercial zone. Then, if it is in a commercial area, how do you regulate it? I think you have to regulate it through licensing, location and some other way besides zoning. It is not really a zoning problem. I think it is really a social problem of how you deal with a perfectly legitimate entertainment use. But how do you keep it from interfering with other laudable things such as going to school and focusing attention on school, as opposed to running around the corner and putting your quarters in one of these machines?

You could go into other aspects of it that are reminiscent of pinball machines in the 1930s. As I say, I understand, with the problem with the video invasion in North York, they asked the gentleman who operated how he would regulate the children using the machines after certain hours. He said, "I just wouldn't give them the tokens to the machines." I may have mentioned this to your committee before. That goes back to the situation that led to

the outlawing of pinball machines in the 1930s, that you had tokens being redeemed for money.

Then the police had a problem, because they could not prove or disprove that in any given situation there was gaming going on, because if you have certain points on the machine, you got back so many tokens and you cashed them. That is always a problem with these machines and I think, no matter what you do, you run the risk of that existing. I think it got so bad in the 1930s that they amended the Criminal Code to put that in there. They have since amended it again to take pinball machines out of the Criminal Code. That is an ancillary problem. It is really not the problem that has been expressed mainly to the city, which is the problem the schools have raised.

At the licensing review committee, we have had one or two parents come to stress their problems as they see them, and we have had the submissions by the school board and we have had representations made to us, mainly from the schools and school principals, that they are concerned about it.

I can only see that it is not a zoning problem; it is somehow a licensing problem. I appreciate that it is very difficult for the committee and the Legislature to decide how to deal with it, because you do not like to interfere with the existing rights of people who have existing businesses legitimately and say to them, "Within 200 metres, or whatever, of a school you have to move."

I know you do not want to do that. But, on the other hand, I guess it is a weighing of the rights as against the responsibilities. It is again the old problem of freedom and responsibility and how you balance one against the other. I do submit that, at least as far as the schools are concerned, they are asking for something to be done.

Mr. MacQuarrie: I certainly can think there are problems with respect to zoning and existing nonconforming rights. But now, assuming a business is established in an area that the zoning permits it to be established in, and assuming that you bring in a licensing bylaw that prohibits that business from operating within 200 feet of the school, or 200 yards, whatever the case might be, and your licensing bylaw says you cannot operate there, what in your opinion as municipal solicitors would you think would be your chances of holding that licensing bylaw up in court?

Mr. Wallace: Not very strong. That is why we are looking to legislation, of course.

Mr. MacQuarrie: You see, the legislation would have to be so specific that it would apply to almost every case where you are experiencing problems.

Mr. Wallace: There is a distinction I have not made. In the private bill we are applying for, I believe we have defined amusement arcades as three or more machines. What is happening, of course, is that a lot of these arcades are not putting in one or two machines; you are talking about 50 or 60 machines. Part of the

technical aspect of this is that a video game can be much smaller than a pinball machine; so you can cram a lot more of them into a given area than you could before with pinball machines.

Mr. MacQuarrie: Would that not be an expanded use in zoning?

Mr. Wallace: In our definition we are saying three or more. So we really do not get at the variety store, you might say, that has two machines along with selling the milk and the chocolate bars. We are trying to get at where we think there is a heavy concentration of these.

Interjection.

Mr. Wallace: That is right: That is their sole business.

Mr. MacQuarrie: One other aspect of this problem has come to my attention. Are these amusement arcades sort of a temporary aberration, a passing phenomenon? For instance, I was in a microelectronics manufacturing centre, I guess, a month or a month and a half ago. They had one section that was working on video machines for home use at a very nominal cost, with small boxes capable of being exchanged, traded and so on for use on a TV so that everyone could have one of the most sophisticated video games going at a nominal cost and be capable of exchanging it for others.

There is a sociological thing here, I suppose, in the arcades, where people like company in these endeavours. It is the same as with pinball machines. Some of us were the only ones with muscle-bound thumbs. But you like the crowd, the company and the other things that go along with it. Now, sometimes there are unpleasant aspects as well.

I wonder whether in going for this legislation, and in view of the rapid technological advances, we are maybe trying to use a broadaxe to kill a fly.

10:40 a.m.

Mr. Wallace: May I just comment on that? I can see that perhaps you are hoping against hope that somehow these things will die out, will sort of kill themselves; that they will get so popular and so--

Mr. MacQuarrie: It is always a prospect.

Mr. Wallace: If that happens, there will be no need for legislation, possibly: they will go away; their own popularity will kill them.

Again, the difficulty is that you have them in a group situation with the arcade. When you have them at home, there is a cost involved that is probably the parents' cost, and that might not be one-shot. Depending on how much these things cost, it may or may not make them widely accepted, depending on the economic circumstances.

But the thing it could lead to is a situation in which you have them at home and you do not have them in a group situation, but there is the possibility of having them in another place in a group situation where there is competition. So the possibility of gaming with them is another thing. That is where the attraction is. The attraction is that if everybody has got them at home, then you keep them in business on Main Street by, maybe, working the angle that you get the gaming into it. Certainly not up front, but, again, I think back to the pinballs in the 1930s and why they outlawed them in the Criminal Code.

Mr. MacQuarrie: Yes. I can appreciate that.

Mr. Chairman: Is that it?

Mr. MacQuarrie: Well, those were just a couple of interjections in terms of questions.

Mr. Brandt: We noticed that.

Mr. Chairman: I had you first on the list.

Thank you, Mr. Wallace. Mr. Kellerman, do you want to add to that before we get to the members' questions?

Mr. Kellerman: In one area only, Mr. Chairman. Subsequent to the meeting with this committee respecting the private bill, I reported back to council on the concern of this committee with respect to putting existing operations out of business, and the council has now given me instructions.

Their concern is only with respect to schools. Windsor does not have the same problem that Kitchener has. I am asking only for power to allow the council to prohibit amusement arcades up to 250 metres from a school, which is approximately the distance of one block. That change is subsequent to appearing before you.

Mr. Chairman: But the same comments go so far as the retroactivity is concerned?

Mr. Kellerman: Oh, yes. I certainly feel the same as Mr. Wallace. Zoning bylaws obviously do not deal with existing uses, and licensing is necessary to control or prohibit uses that have come into existence.

Mr. MacQuarrie: Licensing in specific terms?

Mr. Kellerman: Yes.

Mr. Chairman: Mr. MacQuarrie, now you have your formal questions, or have you had them?

Mr. MacQuarrie: Not yet, but let someone else go.

Mr. Chairman: Mr. Brandt? Oh, I am sorry. Excuse me. I believe the parliamentary assistant maybe should respond. We can cut through some questions if the parliamentary assistant answers

some of the comments of the solicitors.

Mr. Rotenberg: Mr. Chairman, first let me indicate at the beginning that, despite what I might say about comments on existing legislation, we will be reviewing, in our review of all deputation matters, the requests on having a very special category for video games. I would indicate at the outset that I have a major problem in my own riding; so I am not unfamiliar with the problem.

We have talked this morning and previously about the zoning bylaws against licensing bylaws. There is no question that the zoning bylaw is not retroactive, and under a zoning bylaw you cannot get rid of existing video game arcades. Under Bill 11 and under all previous licensing legislation, unless you specifically exempt video game arcades, you also cannot by normal licensing procedure put an existing business out of business. Sub-sub-subclause 2(4)(h)4 of the bill says:

"The council shall not refuse to grant a licence with respect to the carrying on of a business by reason only of the location of such business except that the council shall refuse to grant a licence where the location of the business proposed to be carried on is such that the carrying on of the business would be in contravention of the bylaw passed under section 39 of the Planning Act or a predecessor..."

Basically what this clause says is that if you are there existing under zoning when you pass the new licensing bylaw, you cannot remove somebody by virtue of location. You cannot refuse a licence by virtue of location if they were there before the licence bylaw was passed. So under the general licensing legislation there is legal nonconformity, the same as under the zoning bylaw.

This does not preclude, if the Legislature so desires, making a very special clause for video game arcades so you can remove existing legal uses of video game arcades, because there is a similar notwithstanding clause for the body-rub parlours which was put in by legislation some time ago. Everything is possible by the Legislature, but most precedents indicate that licensing is not used to remove the nonconforming uses.

Another general comment I would like to make, and we discussed this yesterday when people were here on the other side of the coin wanting less restrictive licensing legislation, is that licensing is a form of control and licensing legislation philosophically is not to be used to prohibit, whereas a zoning bylaw very definitely can be used to prohibit.

Page 4 of this brief, the appendix section which the solicitors did not read, comments on what I said about the private legislation, discussing zoning bylaws. They talk about zoning as being generally industrial, commercial, residential and subcategories.

There is no question that there are court cases to uphold this. There is no question that a municipality can define any

specific use it desires, such as a video game arcade. There is no question that a municipality, having put that definition in its zoning bylaw, can prohibit anywhere in the municipality, can allow it in only certain sections, can prohibit it in all sections except certain sections.

There was a court case in the Ontario Court of Appeal. Mr. Justice Steele discussed the city of Toronto zoning bylaw. It is interesting to read, because I think all municipal solicitors should be aware of it:

"I am of the opinion that under section 35...of the Planning Act"--that is the zoning section--"authority is clearly given to a municipality to prohibit the use of lands for any purpose so defined or to prohibit the use of lands generally except for such purposes as are expressly authorized.

"Therefore, the city has the power to prohibit any industry or any use and to single out one use over others, if it so desires. The power is subject to the approval of the Ontario Municipal Board. It is not open to a court to determine whether the exercise of the power of the city was reasonable or not.

"For the same reasons, I am of the opinion that the city has the power to discriminate against one section of an industry as opposed to another. The court was referred to several decisions relating to the powers of municipalities to license and regulate industries. I do not comment on them other than to say that those bylaws and those decisions were based on entirely different principles of law than those applicable when considering a bylaw enacted under section 35 of the Planning Act."

The city of Toronto bylaw, among other things, said:

"Pinball or electronic game machine establishment means any premises or part thereof containing not less than three and not more than 20 pinball or other mechanical or electronic game machines operated for gain and containing no other use except a refreshment counter or a refreshment stand which establishment is located no closer than 150 metres to any other pinball or electronic game machine establishment and no closer than 300 metres to any public school."

The city of Toronto has defined a pinball or electronic game machine establishment as a video game establishment. They have said they can only go into certain zones and over and above that, they have said they cannot be within 150 metres of another establishment or within 300 metres of a school. That bylaw was upheld not only by the Ontario Municipal Board but also by the courts.

So a municipality can do all those things for any future uses. As I stated before when we were discussing the private bill, it is the opinion of the ministry, subject to other input we may get, that this type of thing should be done by zoning because it is a zoning problem and not a licensing problem; it is a use and a location where the use should be. Zoning is used to prohibit uses or put uses in certain areas. Licensing is not for prohibition or

discrimination. Licensing is to control but to allow everybody who wants to be in the industry the same rules.

As I said originally, the Legislature can, if it wishes, make a very special exception for video games if it feels video games come in the same class as body-rub parlours. Body-rub parlours were considered a hazard to society six years ago by the Legislature.

10:50 a.m.

About the other points that are made, there is no question that regulating location can be done. We may have some problem with age, but the number of machines can be done by zoning. As far as schools are concerned, it can be done.

The other problem that was raised--and, again, this gets into the whole philosophy of what this Legislature should be doing--is if there is a problem of children skipping school and going to video game arcades, there are, under the Education Act, powers of the truancy officer and so on to deal with that problem. The question then becomes, should existing legislation that can deal with the problem be used or do we feel the problem is severe enough to have some special legislation over and above the Education Act?

The regulation of hours, which is requested, is provided for in Bill 11 as in previous licensing. There is no problem with regulation of hours.

With respect to the video games, which seem to be the major problem these two municipalities have, any future use, in my opinion--this is not my own opinion; it is the opinion of the ministry and our solicitors--can be controlled or prohibited in any part of the municipality or any distance from schools can be handled under the zoning bylaw. Existing uses cannot be handled by the zoning bylaw.

As I indicated, unless the Legislature wishes to make a specific exemption, even if you give them the licensing powers, licensing powers do not also allow the municipality to put out of business existing uses.

Having said all that--and I wanted to get all that on the record--I would indicate to the committee that when we get the sense of the committee on this issue, the ministry will of course look at this, because, as I said, from the ministry point of view and certainly from a personal point of view, video game parlours are a problem.

Mr. MacQuarrie: The gaming aspect that has been raised would be pretty carefully and thoroughly covered by the Criminal Code.

Mr. Rotenberg: To the best of my knowledge, there has been no indication to our ministry that video game parlours become gambling parlours; there is no gambling. The fact is that you can buy coins to go in the machines instead of quarters but you cannot

cash the coins back in. You do not win coins from the machines. That has not been a problem as far as I know.

Mr. MacQuarrie: The prospect was raised that the same thing could occur as had occurred with respect to pinball machines. If there were pressures, economic or otherwise, on the operators, the prospect of some form of gaming could develop. Was that not the case?

All I say to that is the Criminal Code has pretty elaborate provisions with respect to gaming.

Mr. Brandt: I want to get back to the question of hawkers and pedlars for a moment. I have no difficulty whatever in associating myself with the remarks you made earlier. I believe it is a very serious problem and one that is not adequately dealt with in Bill 11. I have a few questions in mind with respect to the direction you seem to be wanting to take as well as the chamber of commerce's position.

To put some background on the matter, does your municipality at the moment have a form of close-out bylaw where there are licences for a business that is going bankrupt or is ceasing operation for whatever reason?

Mr. Wallace: Yes. We have a special sales licence where if they indicate they are selling out of the normal course of business, they have to apply for a licence with the list of the goods they are proposing to sell.

Mr. Brandt: I do not believe there is any consistency or uniformity in Ontario with respect to these kinds of close-out bylaws, for purposes of relating a close-out bylaw, as it relates to a "legitimate" business that has been in operation in your community and, on the opposite side of the coin, as it relates to the type of sales that concerns a lot of us here--the itinerant sales operation that comes in to a typical hotel room or whatever, to sell some close-out merchandise. Does your bylaw regulate stock that is brought into a store once the licence has been issued? Do you limit the inventory?

Mr. Wallace: Yes. When they apply for the special sales licence, they are supposed to generally list the merchandise they have; and it is open to the inspectors to check what merchandise relates to their application and attempt to make certain that as fast as it is going out the front door, it is not coming in the back door. That is very difficult to police, but we do attempt to do that. Of course, we have to rely on the knowledge of the inspectors of the people in the area that are putting these special sales bylaws on that indicate it is something out of the normal course of business.

Mr. Brandt: The reason I raise the question is that it is interesting that a legitimate business that has been in operation in a community and decides to close out has regulations on its inventory, the amount of goods or stock or merchandise that it can bring in for sales purposes, and yet a stranger from out of town can come in on a one-day sale or whatever, a weekend art sale

in a Holiday Inn hotel room, and can, with no restriction whatever, bring in whatever kind of merchandise he wants, dump it on the community for a short period of time and then leave with no further responsibilities or complications.

I only wanted to put that into context. I think there is a very basic, fundamental unfairness between those two positions. Not that I disagree with the close-out bylaw; I think that should be there, because I have seen in some American cities--I do not know that it goes on in Canada--where the close-out sales on the signs of certain retail stores have been there so long that they are faded and worn and they appear to have been up there for many years. Try New York some time and you will see the kind of thing I am talking about.

Mr. Breithaupt: "Some day, my boy, this will all be yours."

Mr. Brandt: Yes. Certainly.

Mr. MacDonald: Some of them are in permanent bankruptcy.

Mr. Brandt: That is the exact point.

What I want to get at, if I might, just for a moment, is that I am in sympathy with what your chamber of commerce is saying; however, I would like to suggest to you that it is totally unworkable in terms of the fee which would be some kind of deterrent--not a prohibitive fee, but a deterrent--to this kind of business.

As I understand the chamber's position, which you have incorporated into your brief, they are suggesting a fee of, rather than the \$150 you have at the moment, somewhere between \$100 and \$1,000. The reason I have some difficulty in that fee being based on the volume of business is that I can see a number of situations where, for example, a sales crew would come into a community and sell a number of items over the course of whatever sales period it might be involved in; the volume of sales that took place during that time frame would be relatively low but there would be some residual sale that would take place at a later point, perhaps subscriptions to a magazine or encyclopaedias.

That type of thing would be extremely difficult to control, in my view, based on a volume of business kind of relationship. You have such a wide variety of ways in which these kinds of sales can be conducted. I do believe they have to be controlled, but I do not think volume of business is the only criterion that one could use, primarily because these kinds of operators would have many different ways of getting around that. For example, they could delay the collection of the actual money during the sales period, and collect it on the fourth day rather than the third day, or whatever your licence happened to suggest in terms of what was allowed.

You do have sales crews, you have one-day sales, you have roadside sales, for example, of art work, food products, fruit stands, vegetable stands--all of those kinds of things that come

into a community without having any of the responsibilities that a normal food store would have.

I am wondering if you might have any suggestions as to a more workable idea and whether or not the council of your municipality has discussed a method by which a more workable fee structure could be developed. I do not like the one that is on the list now for consideration.

Mr. Wallace: The council has not discussed the applicability or the practicality of a volume-related fee. The only thing I can say is that when the \$150 fee was brought in, as compared to what it had been in other municipalities and what had formerly been in Kitchener, it was effective as I understand it. It did have some effect on discouraging the sales because, relative to other municipalities, it was quite expensive; so they went other places and did not come to Kitchener.

Now, I guess, depending on timing and depending on the kind of merchandise, the \$150 does not seem to be a deterrent in any way, certainly to some sales. But when it originally came in, it was a deterrent. It may be that the only effective way to deal with it is to say \$500 or \$750 or \$1,000 on a per diem basis. In other words, say, "Each day of the sale, this is what you are going to pay," if that is what you want to do.

11 a.m.

Now, on the other side of the coin, depending on the merchandise, I am sure that if it were \$500 a day, they just would not bother, because there is not enough of a markup on certain kinds of merchandise to make it worth their while, but on others it would be. One can think of some kinds of merchandise where \$500 a day probably would not deter anybody, depending on that particular market.

I believe, and I do not know whether it is myopic of me to believe it, that the Kitchener-Waterloo area is regarded as a pretty prosperous area, and I think the people that come in for these kinds of sale analyse the area they are going to zero in on with these sales as to the kind of return they can expect, and they are very selective on how they do it. And I think they will not come in unless they stand a chance of making quite a bit of money and, unless the license fee is sufficiently high, it will not deter them at all.

All I can go on is our experience, which has been that the \$150 fee did have some effect when it was originally brought in, but it does not seem to now.

Mr. Brandt: Do you favour some kind of permissive legislation that would allow a municipality to deal with the situation based on the response that they feel is adequate and necessary for the conditions that exist in their area, or do you favour some kind of global legislation that would cover the entire province? On which side would you come down on that issue?

Mr. Wallace: Again, I think experience is what you have

got to deal with. Just to give you an example--and I do not want to embarrass the city of Waterloo--

Mr. Brandt: Oh, go ahead.

Mr. Breithaupt: Go right ahead. No problem at all.

Mr. Wallace: The city of Kitchener has really far more licensing regulations than the city of Waterloo and applies them. We have had situations where somebody comes in for a hawker's and pedlars' licence for oil paintings, for instance; they have come to the counter and they have filled out the application form and when they realized, for instance, that they were going to have to, in this particular situation I am talking about, obtain clearance from the local police about their character and so on, they immediately left.

Fortunately, the clerk who was involved was on the bit, thought that was rather strange and, on a follow-up on that with the police, the chap had gone to Waterloo and opened a business without a licence. He was descended on by the Mounties, the provincial police, the regional police and the customs and immigration.

What had happened was he had come across the border with a truckload of these oil paintings and was proceeding right through every town. That is one situation where they were quite happy that we had the kind of regulations we had, and apparently they were able to stop him in his tracks.

Mr. Epp: What you are saying, Mr. Wallace, is if he had not been able to operate in Waterloo, they would not have caught him.

Mr. Wallace: I will leave you to interpret it the way you would like to.

In another similar situation, again with a hawker and pedlar, because we had the regulations, we had somebody who was wanted by Interpol. In my way of thinking, legitimate people do not have anything to be concerned about as regards the kinds of applications and the kinds of fees that are paid. Maybe illegitimate people are concerned about the information requested on the application and, on the other hand, they are not too concerned about the fee.

All I can say is that is the experience we have had. We think that, with local pride, we are more protective of our inhabitants than is the city of Waterloo.

Mr. MacQuarrie: What do you do with kids selling chocolate bars for school events?

Mr. Wallace: Maybe I should not comment this way, but just as the post office says it is going to be selective about its new definition of what is a letter, we do not really look at the church groups selling chocolate bars with any great alarm.

Mr. Brandt: Do you see a problem in connection with the proposals in Bill 11 to take certain powers away from police commissions as it relates to scrap yards, pawn shops, taxis--the licensing function--and moving those to a council effectively, recognizing that in many instances the very situation you addressed a moment ago, that your clerk caught someone who was in a pseudo-criminal kind of activity, the commission in all probability would be in a better position to catch fenced goods, stolen goods or whatever that were being sold through pawn shops, second-hand stores or some of the outlets they have available to them?

Do you see any problem in removing that authority from a commission and putting it in the hands of a council? Or does it bother you at all?

Mr. Wallace: We already have that situation in Kitchener. There were bylaws that were administered by the police commission and, with the advent of regional government, that was put with the city. As far as the city of Kitchener goes, and again we have people who are familiar with it over the years, we can say from our experience right now and since 1973, we have not had too many problems with that.

As I pointed out to you, apparently this varies according to the area municipality. One municipality within the region might take a very strict view of matters and another one take an entirely relaxed view about the whole thing.

Mr. Brandt: Let me give you a specific case in point. If you attempt to sell certain goods through a pawn shop, it is a requirement of that pawn shop in certain instances to report that merchandise is there for sale, has to be recorded and so forth, and a large volume of stolen goods is identified through these mechanisms.

Let us say you have an individual who has stolen merchandise and who goes to a pawn shop and attempts to get rid of that merchandise through the pawn shop. In the case I am thinking of, the police would be called and would be advised, at which time, through their Canadian Police Information Centre network, they would immediately get information, perhaps on the individual, and would know whether he had criminal inclinations, was involved in whatever kinds of criminal activity and so forth.

How does a council do the same thing when they do not have access to confidential police information in situations such as the one I am suggesting? It goes on every day, every single day in every municipality. Taking that function away from a commission and giving it to a council immediately removes from a council the ability to respond to some highly organized criminal types.

Mr. Rotenberg: The police can still enforce the law.

Mr. Brandt: The police can still what?

Mr. Rotenberg: Enforce the law even though they do not licence.

Mr. Brandt: If they are advised; but it is even difficult for a police commission or department to provide a council with the information upon which they could act. They are the body that has to respond, because they are the one that is doing the licensing.

Mr. Rotenberg: It has not been a problem in many municipalities where the council licenses. They get a report from the police on applicants for sensitive things like pawn brokers. I do not think it has been a problem where the power has been transferred to councils. The gentlemen who have had the powers transferred can answer as well.

Mr. Wallace: What we have done is we have put on all our applications for licences, a question, "Do you have a criminal record, yes or no?" Then we refer that application to the police and they check to see whether the question is being answered properly. They then are aware of people applying for licences.

11:10 a.m.

Mr. Brandt: You have had no indication whatever then of any breakdown between that type of--

Mr. Wallace: No. As far as we are concerned, that has worked quite well.

Mr. MacDonald: Do you deny the licence immediately and automatically if they have misled you?

Mr. Wallace: Quite often we find that they--as I say, in the one instance when they found the question, they hurriedly left the county. In other instances where someone has said, "Yes, I had a conviction," and we know the details of the conviction, I do not know of any situation--maybe it is just luck, I do not know.

Normally the convictions have been fairly minor and nobody has gotten too worked up about it as far as the licence they are applying for is concerned. It seems to be that if it is a serious conviction, they just do not bother after they see it; but that may be just our good fortune that we have not had a great controversy over that method of doing things.

Mr. Brandt: I want to raise the concern because I can see some problems, recognizing that police in many instances are following certain individuals, watching their activities, tracing their actions as they relate to the disposal of this kind of merchandise, doing a lot of things that the council was not in a position to do.

I have a concern about a breakdown in that kind of activity on the part of the police department when this licensing power would be taken away from the commission which works hand in hand with the police. If you say it is working, that is a little more comforting than what I thought your response might be.

Our own commission in my community of Sarnia and the police

chief are concerned about losing that authority, because they do see a strong possibility of the co-ordinated effect they have at the moment breaking down as a result of having one more level of authority involved in the whole exercise. It is complicated and confusing enough as it is and the information flow is difficult enough that they do have some concerns about it.

Mr. Rotenberg: Yesterday Mr. Brandt raised the problem of hawkers and pedlars in flea markets. I would like to report to the committee that we have discussed this matter overnight with our legal and planning departments and so on.

I do not like to harp upon this difference between licensing and zoning but, as I said before, licensing is to regulate and zoning is to prohibit. Within the zoning bylaws, our planners and lawyers feel it is very simple, for instance, for a municipality to put in a zoning bylaw: "There can be no retail trade in private hotel rooms. There can be retail trade in hotels only in certain defined public areas."

Mr. Brandt: That is so unrealistic.

Mr. Rotenberg: Just a moment.

Mr. Brandt: Let me interrupt just for a minute. In that situation, how do you stop the legitimate merchandiser of wholesale female attire, as an example, from going into that same hotel room? How do you differentiate between that seller of merchandise who is performing a legitimate function and bringing in retailers from the area who congregate in that room to see merchandise and the guy who is going to sell the leather coats Mr. Breaugh mentioned?

Mr. Rotenberg: With respect, you can put in your zoning bylaw, "No retail sales from hotel rooms," which does not preclude your person putting on a show; you can do it and our legal opinion, including the court cases, would indicate that you can do that. The new Planning Act, as distinguished from the old Planning Act, gives you much better powers of enforcement because if someone is convicted, and the hotel could be convicted for improper use or the person, then there can be an immediate injunction preventing them from doing that.

Mr. Epp: Let me carry that one step further. You say "from hotel rooms." Maybe you can do that, but what happens if they get floor space in the middle of the mall or something?

Mr. Rotenberg: I will come to that in a moment. I am talking about flea markets. In your zoning bylaw, let us say you can prohibit sales from parking lots in shopping centres. You can prohibit, and this may be a problem, retail sales from the mall areas as distinct from the store areas which may give a problem to the merchants who want a sidewalk sale. But you also can, as my lawyers advise, prohibit anything other than continuous retail trade in the shopping areas. So you can provide that the shopping centre can have only those kind of merchants who have continuous retailing, and the shopping centre cannot have merchants who have part-time or flea-market merchandising.

This can be done under the zoning bylaw. With respect to some of the municipalities and some of our own legislators, I don't think municipalities--because there were certain traditions when the zoning bylaw first came out years ago--are really taking advantage. There are vast powers in that Planning Act, even the old one, and even more in the new one, where municipalities can prohibit. Someone on my own North York council said, "But on a zoning bylaw, you cannot prohibit a use." Section 35 or the new section 39 of the Planning Act says a municipality may allow or prohibit.

There is no question that municipalities can prohibit uses under the Planning Act and can discriminate under the Planning Act, which we don't feel they should be doing under licensing. The only thing, in our opinion, you can't get at under zoning, and this whole problem of hawkers and pedlars, is the door-to-door salesman.

Mr. Epp: Could I add something here? When we were going through the Planning Act, I never heard you talk that way about the "vast powers" the municipalities had and were getting.

Mr. Rotenberg: Nobody asked me.

Mr. Epp: Well, you certainly slanted things differently, I must tell you.

Mr. Breaugh: It's a different act.

Mr. Rotenberg: With respect, Mr. Epp, there are obvious powers. We are talking about powers to prohibit under the zoning laws. There has to be a hearing, and there has to be an OMB approval. But, subject to a public hearing and OMB approval, our staff, our lawyers and our planners say there is no question that a municipality can control or prohibit flea markets, retail sales in hotel rooms and that sort of thing. That type of control, in our opinion, is a much easier way than trying to catch them and get them to be licensed. If someone is going to sneak in and not buy a licence, he may also sneak in and not conform to zoning, but it may be easier to charge him under a zoning bylaw.

What I am indicating to you, Mr. Chairman, is that the powers are there under zoning to do an awful lot of what is being requested to be done under licensing.

Mr. MacQuarrie: Also, you could eliminate an awful lot of business transactions in hotel rooms.

Mr. Rotenberg: Yes.

Mr. Breaugh: Would you like to elaborate on that one?

Mr. Rotenberg: The question is whether that would be retail or not.

Mr. Breithaupt: More likely to be wholesalers.

Mr. Chairman: Can we get--is there another one-liner?

Mr. MacQuarrie: Garage sales are becoming more and more common, particularly weekly garage sales in the same garage.

Mr. Rotenberg: In most areas retail sales are prohibited in residential zoning. I think zoning inspection will work if a person has a garage sale once, but if there is a complaint by neighbours, certainly the zoning inspectors may come in and if somebody is selling retail out of his garage, that is or can be made contrary to the zoning bylaw.

Mr. MacQuarrie: So you feel that is more appropriate under zoning than licensing?

Mr. Rotenberg: Again, if you want to license garage sales, there is no question the municipality can license them. They can set up certain regulations, but they cannot use the licensing provision to prohibit garage sales. They can regulate hours, they can make certain regulations--

Mr. MacQuarrie: And numbers.

Mr. Rotenberg: Not the number of times a year they can do it. No, they can't regulate that in licensing, but they can regulate hours. They can prohibit them under the zoning bylaw. The question is whether you want to regulate or prohibit. If you want to regulate, you use licensing. If you want to prohibit, you use zoning.

Mr. MacQuarrie: What do you want to regulate? Do you want to say to the guy, "You can have two garage sales a year and no more"?

Mr. Rotenberg: That can be done either by licensing or by zoning. You can do it by zoning.

Mr. MacQuarrie: Not numbers?

Mr. Rotenberg: No. You can't do the number of times by zoning. You can prohibit them by zoning, but you can't do the number of times by zoning. That would have to be--

Mr. Epp: You can prohibit?

Mr. Rotenberg: You can prohibit them by zoning. Sometimes councils or zoning bylaw inspectors will wink at something that is only once or twice a year.

Mr. Breaugh: I appreciate the briefs that are before us this morning, because they give us different perspectives from different municipalities.

I want to begin with the rather quaint term "hawkers and pedlars." I am having a little difficulty here. I have no problem with the idea that someone may move into a place that is normally not a commercial place of business, set up shop and then compete

against the local merchant. I think that there are reasonable grounds there to try to provide some measure of fairness, and that many of them are exploiting unduly an opportunity to do business.

Are you relatively satisfied with the provisions in this bill so that you can, first, identify these people, and, second, get some kind of understanding as to whether that is a legitimate business or a not-so-legitimate business and recover amounts of money that would cover your actual costs? Does Bill 11 do that for you?

11:20 a.m.

Mr. Wallace: We have looked at Bill 11 about the licence fees, because in the normal licence I think council took the attitude: "All right, provisions that are proposed for licence fees are probably all right. If we have an examination situation we can bump up the fee, and if we can make sort of a calculation we can increase the fee above the \$25 to reflect our costs and so on."

But that fee, which is limited in the proposed Bill 11, does not really help us with hawkers and pedlars, because our experience has been that when we raise the licence fee for nonresidents to \$150 it was very effective in discouraging the number of these sales we have had; and if that is taken away, if we cannot even charge \$150, then instead of having the situation we have got now, we are going to really compound it.

We are not going to be able to charge these people as much as \$150, possibly, without going through an analysis of what our costs are and perhaps having to go to court in a situation where we charge somebody and they say: "Justify your fee. If you are charging \$150, that it is a reflection of your costs. How do you calculate that? Is the cost attributable to the administration of this particular element of your licensing, or is it the costs for all the licences? Why would you charge \$150 for this kind of licence and not for the other licences if you are relating it to costs?" There are some complications that could arise in court if you are trying to raise that fee over \$25.

What is it all worth if we go through and we wind up being able to charge \$150 at the most, which is what we are charging now, and it is not a deterrent to the problems the local merchants are having? They are having problems with these.

Mr. Breaugh: I am basically pretty sympathetic to this point of view. But, for purposes of argument, let me put the other side of the coin. Why should a municipality regulate against a one-day special sale event? What about consumers in that municipality? I was born and raised in a small town, and it was fairly common knowledge that in that town the merchants were not faced with any severe competition; now they are, because people in Napanee go to shopping malls in Kingston, Belleville and places like that. Merchants are screaming now that those shopping malls 25 miles away are unfair.

There is a bit of an analogy in there between someone who

comes in and can offer items, which he got, I hope, legitimately, at a substantial discount. What about the people in the community other than the business people? What about the ordinary citizens? Do they not have a right to be able to buy goods at a relatively lower price than they normally would have to pay? In particular, in isolated parts of the province--or quasi-isolated; no part is really that isolated any more--but in northern Ontario and rural Ontario people often are still faced with the same problem, that their local merchant decides unto himself what he wants to charge for his goods and the normal factors that you see in a big city marketplace are not there. How can we solve that one?

Mr. Wallace: The other side of that coin is this. I think it is all part of the responsibilities for the services that are installed in the municipality, who pays the taxes for those and so on. I grew up in a small town where they had, for instance, a local grocery store. Eventually some of the larger grocery stores came in, and they could sell their goods at a much lower price than the local grocery store.

You had a lot of people at one time who felt they were really captives of the local merchants, that they had to pay their price and they had no choice in it. Certainly there was some resentment because of that, and they sometimes welcomed the itinerant merchant who came in and said, "Yes, I can get a pot, or whatever it is, cheaper there than I can from the local merchant." Now, to me that is fine. But, again, that is looking to the residents' own interests as opposed to those of the merchant. That is fine if that happened and it went off once in a while.

Then we had the larger merchants who got into the smaller towns; they had lower prices and they virtually eliminated a lot of those small grocery stores--they are just gone. Then you have to question whether that large merchant who came from out of town had any responsibility or even any identity with the local municipality, and I think this is what we are talking about. We are talking about a thing that is peculiar, I think, to the small cities and towns in Ontario; and as the economic situation worsens, it will become more evident within Metro Toronto. I think in such a big place that you do not really, except, say, in isolated communities--how can I put it? In neighborhoods that identify themselves in some way--it used to be the Danforth or somewhere--as shopping areas there may be some sense of local community and local responsibility.

I think you are finding that merchants feel they do have a commitment to the community they live in; they do pay their way, they participate in the community and they want some protection from that community. Now that, I think, is at odds. There are a lot of people who feel that, if the merchants have too much their own way in that community, they are the victims. But I really do not see in this day and age, with the mobility of things, that this applies, certainly, as much in southern Ontario.

It may be different if you get into a much smaller and much more isolated area; I can see how that same thing could apply in northern Ontario. So I appreciate that there are two sides to the coin. But the problem, again, is compounded this way. Since those

days when you had downtowns that were strong and vibrant and so on, you now have downtowns that are having problems keeping their heads above water, because the planning since the Second World War has been based on the automobile. You now have plazas all over the place in the outskirts, and a lot of the downtowns are having problems.

Where does the itinerant merchant come? Quite often he comes to the downtown, where the motels and hotels are, and that is where he hits. Sometimes he comes to the malls too; and I can say that in some situations the mall owners, after they have tied up all their tenants with iron-clad leases, bring in these itinerant merchants and put them in the common areas, and the local merchants who are in there are too frightened to say anything about it. They are victimized by the itinerant merchants too, but they are so tied up with their leases that there is not a thing they can do about it. And really that is a question, again, of the sense of local responsibility. I submit that in that situation the mall owner does not have any sense of responsibility for his own tenants. I am saying too that in a lot of situations, this whole argument does not mean anything to the larger corporations.

The only person to whom this really matters is the local merchant, because he does have a sense that he belongs to the community. Now, maybe he is resented to a certain extent by some of the shoppers in the community, but I do not know what you do. I think the effects of wiping out the local merchants are worse than giving them a little protection here.

Mr. Epp: If I could just have a supplementary, Mr. Chairman: It may not be that everybody is opposed to it, because if he brings in a lot of artwork, the other stores who find more people generated as a result of that particular sale do not mind them coming into the mall--

Mr. Breithaupt: Because there is more traffic.

Mr. Epp: --because they might buy some ice cream, they might buy more meals or whatever they are going to buy. So even there it is very selective in terms of the people who are opposed to that particular day salesman coming in.

Mr. Breaugh: The only thing I want to put here is a little bit of a caution. I recognize there is a legitimate concern on the part of business people; but this thing can get extrapolated in a hurry into something that is unfair to everybody else. That is the concern I have.

I think there is a legitimacy in the points you have made about protecting your local tax base, which is really what we are talking about. I am sure we all have some social concerns about people who run the local stores. But we are also saying there has to be some fairness. These people are here and participating in our community, paying taxes and doing all the wonderful things some merchants do, and they deserve some measure of protection, but the community itself also deserves some opportunity.

11:30 a.m.

I guess the best example I have of that is that generally we take an attitude that people who run special sales on a one-time basis are borderline legitimate. I have to point out that in this day and age that includes General Motors and Chrysler, who have both taken over the Canadian National Exhibition on occasion and run exactly the same kind of event. They bring all their dealers into one place for a short period and run a special sale. So you have to kind of put a measure of caution on that.

The other area I wanted to ask you a few questions about is this video game stuff. I have a real problem with that. First, it is ignorance. I have never played a video game. I do not know what the great thrill is. I have shot pool, played pinball and done several other very simple things, but I have never played Pac-Man and I have to get to the bottom of this. What the hell is wrong with video games? I have read the arguments here.

For example, when I was a school principal, I used to love pool parlours, smoke shops and shopping plazas because it was my job to pick up the truants. They attracted those kids to these places and it saved me wandering about the neighbourhood. I knew where the kids were--they were in the pool hall, the smoke shop and stealing things out of various stores in the local plaza--so it made my job easier.

In no way did I ever say or think for a moment that the reason this kid was absent without leave was that there was a Dufferin Mall where he could go. I always took the position that the problem was in the home and in the school. The home did not have much of an influence on this kid and the school did not have very much to hold his attention either, but I did not blame the shopping malls. Why does Pac-Man get blamed for truancy these days?

Mr. Wallace: To a certain extent it is the attraction of the things. I think if you do play them, you will find they are attractive. All we know is that school boards and some of the school principals have said to us that they find a problem when they are so close to the school. On lunch hours and so on they go out and play and they do not come back.

As you say, there may be other reasons for that and that is just an attraction for them. They complain to us about them spending their lunch money on that and not eating lunches. If they did not spend it on that, perhaps the answer is they would find something else to spend it on, other than the kind of food we would like them to eat if they were doing what they should be doing. I agree that--

Mr. Breaugh: We used to go behind the scoreboard and smoke a deck of Export A's. That was our version of Pac-Man.

Mr. Brandt: All at once.

Mr. Breaugh: All at once. In about an hour.

I think there is a difficulty which I understand because I used to have to work in that field, but I do not see how the video

game thing is the problem. For example, I read the proposal here by the city of Toronto and it seems to me they missed one. There is a little green box up at my corner store which is a quasi-game of skill, chance or whatever. It allows for gambling, which is even worse than Pac-Man. The only thing that makes it legitimate is that the green box is run by the province or Lottario and they advertise massively. Where is that in here? Why are you not complaining about the lottery games in the corner store? That is promoting the gambling effort right here in our neighbourhood. Why are the video games bad and Super Loto is okay?

Mr. Wallace: Let us put it this way--

Mr. Brandt: Who do you want to answer the question?

Mr. Wallace: If you really want me to answer that, I would say the problem is that these machines attract all kinds of money. The people who have them make all kinds of money. They may not admit they do, but they do. They make a tremendous amount of money. The province of Ontario makes a lot of money on gambling. All I can say is that where there is a lot of money, there are also a lot of people attracted by it. A lot of people who are undesirable characters are attracted by it.

With all due respect to the lottery system, that has all sorts of inherent dangers in it too. It can lead to people who are trying to work out the angles about how they can get some of that money. They do not have the best of motives behind them when they are into that. I don't know if you have it yet, but it is coming down the pike, and you are going to have a lot of problems with bingo lotteries.

We are aware of that in our community and that is only the tip of the iceberg. The more money that is involved in games of chance, or whatever, the more you leave it open to the unsavoury element to get into it. People say it is a natural instinct to gamble. The other side of the coin is if you are going to allow it, then you must regulate it. You must be hard on the offenders. It is so easy for it to balloon and then you will have problems.

I don't know about Wintario, or some of the other ones, but I would be willing to bet they have problems with those too. They may not get as much publicity as the pinball.

Mr. Breaugh: The difficulty I have is that I do not reject for a moment arguments that principals of schools and school boards of municipalities are making that our kids are spending time with video games. But those are all the same valid, legitimate arguments that I used to make, or my mother made, about pool halls. My dad used to make them about playing pinball. You are making the argument about playing bingo. I am making it again about Super Loto, or all of the numbers games that the province runs so efficiently and makes so much money from. Is that going to be resolved by passing some local bylaw which says I have to walk another three blocks to get to the video game parlour? I do not think so.

First of all, I am having a little difficult establishing

just exactly why it is people are opposed to video games, except municipally I know it is very trendy now to oppose the video games. I am not too sure why, because if we wipe out the video games, I do not know what it will be, but tomorrow somebody will come up with the latest version of the pool hall, pinball parlour, video game parlour. I do not know what it is going to be about, but I am sure it will be there.

Are we really doing much good by spending so much time and energy attacking this problem? Is it worth doing? That is the basic question.

Mr. Wallace: You never resolve these problems. It is a question of trying to cope with a problem that is perceived by a lot of people who have difficulties with their children. They do not know why they are having the difficulties, either. Maybe the school does not fully understand why it is having the difficulty, but they trying to identify the problem. They think that is the problem. You never completely resolve it, but certainly if it can be regulated and even assist one or two people, then at least you have to try.

I do not think there is an absolute answer to it. There never will be. You are just trying to stem the tide in this kind of thing.

When you talk about lotteries and bingos, and it may not have come to your attention, but you have the problem with the Monte Carlo lotteries. The police are very concerned about that. If you look at a Monte Carlo lottery, there is no difference between a Monte Carlo lottery and the old punch boards, which are specifically spelled out in the Criminal Code as being illegal. It does not identify the Monte Carlo ticket as being illegal, but there is hardly any difference between the Monte Carlo ticket and punch boards, and the one-armed bandit, the slot machine.

There is an example; the one-armed bandit, the slot machine. Why do we not have those? If you take your argument and turn it around, somebody would say, "Let us identify that as being the culprit and not have them anywhere." If I take your argument, I would say: "Okay. You are right. Bring all those back in." They, in themselves, are not the problem. They are an inanimate object that somebody goes up to and plays. These video machines are the same. They, in themselves, have no motives--have nothing--they are just there.

The people who are dealing with them have to perceive whether they cause a problem. They may not be the problem. There may be other things associated. It is the associated problems where we have the chap who operates one of these places and the police discover all sorts of stolen goods in the ceiling, that he is a fence, and he comes in and says to the kids, "I will give you so many games for that," or something like that--that is the kind of situation that arises.

11:40 a.m.

There is the propensity to have these problems because you

have these businesses that thrive and make a lot of money. The fact that the money is there attracts the problems. You are asking what good it will do to eliminate or regulate these games. I am not sure that it is the total answer, but maybe it is a way of people trying to cope with the problems as they perceive them.

Mr. Breaugh: I have some sympathy for the problems you put forward. The difficulty I am trying to get at--I am not a fan of trends. A trend in everybody's municipal council is to find something like video games and crusade against them. I am happy with that if I think, in the long run, they are doing anybody any good. I remain to be convinced that is the case. A lot of time and money is being spent on the pursuit of this particular trend, and I am not sure there is going to be any benefit at the end of the process, quite frankly and seriously.

Anybody's corner milk store will have cigarettes for sale, which are very bad. They will probably have the little green box sponsored by Ontario, and that is just a clean form of the numbers racket, in my view. Everybody's corner milk store these days has literature for sale that you could not portray on the screen because the censor board would not let you do that. It is there to be bought.

If you want to chase bogeymen around the block, the obvious mean place to be, the centre of sin in my community, is the corner milk store. I do not hear people railing against the corner milk store. I go in there to buy milk and bread; I do not buy any of this junk. Kids congregate there, and it seems to me they are occasionally rude, just about as rude as I was when I was 13. They use the same language I heard at the rink and the ball park when I was eight. I do not see a hell of a lot of difference there.

I appreciate that there is a need to regulate and license a lot of things in our community. I am reasonably happy that video game parlours, amusement arcades and things like that are places where young people, sometimes with problems, will gather, but I think you are running against the current of humanity if you think you will wipe out sin by closing down video games. I am a little confused as to how this got to be such a massive movement. It is almost like a Pac-Man invasion, and we are just one step short of calling out the army. If it had any vehicles, it would probably get there and stamp them out.

You are reasonably satisfied then that Bill 11 gives you the power to control, regulate and license video games?

Mr. Wallace: No.

Mr. Breaugh: You want more. You lost me when you spoke against bingo.

Mr. Chairman: I think what we are getting down to is the question of body-rub and entertainment parlours. To put it bluntly, this legislation says you can bounce existing ones. These gentlemen would like pinball parlours put in the same category, to be able to bounce existing ones, whereas the parliamentary assistant is pointing out that under the Planning Act the

nonconforming existing ones cannot be touched.

Mr. Breagh: There is the problem in a nutshell, and perhaps we could get these gentlemen to respond to it. I am a little concerned that the short list of sin centres is growing. To take a video game and put it in the same category as a body-rub parlour to me is nuts. If I had the money, I could buy my kids a Pac-Man game and put it in my living room. Nobody has yet packaged the body-rub parlour for the old man. Do you see the analogy that flows through here? You get that category going, which is precisely what the chairman said, that these are evil things.

Where I have a problem is that if we pass a law saying something is illegal, we have a whole court system out there to stamp it out and to deal with it. We have police forces to prosecute and lay charges. Where I have trouble with video games and a few other things in this bill is that we are saying to a local council, "You decide." We are not really saying, "You decide that is an illegal act." You gentlemen yourselves have said video games are fun. They are not really bad things in themselves. Yet we are getting very close to the point where we are being prohibitive about it all. We are putting it into a category where we say that particular activity is extremely undesirable. We are not really saying we want to regulate it.

As you have pointed out, various municipalities have passed zoning bylaws which really are a hoot, mine included. The purpose of the zoning bylaw is to eliminate video game places, so they pass a zoning bylaw that says they can have it in the lake, some ridiculous thing like that, or they can have it in an industrial mall where there is no possible clientele. That is a farce and a waste of everybody's time and money. This category idea that is being floated about and is here in this bill is one I have a great deal of difficulty with. I am not sure that is a sensible way to proceed. As you said, bingo games are on your list. I have to tell you in Oshawa that is close to being a religious exercise.

Mr. Wallace: May I just elaborate, since you said the main reason was that I had bingo on my list? Maybe I can get into that a bit further. Bingo is a perfectly innocent game. Charities and service clubs have put bingo games on, and that is fine. I suppose charities and service clubs could have their own video game places. There you have people who are basically amateurs putting them on with the best of intentions and they deal with it. However, now we have professional entrepreneurs coming in who are promoting bingo and getting the charities up front as a front. Less and less money is going to the charities and more and more is going into so-called expenses, which seem to find their way to the professional bingo promoter.

We don't know for sure, and there is nobody who can tell us, but certainly you could trace the manufacture of pinball machines back to a very small group of people. There is a great deal of suspicion about who was involved in the manufacturing and distribution of pinballs and the whole regulation of that. I think Mr. Renwick analogized that to laundromats at the last hearing.

Perhaps that has not happened yet with video games, but the

sense is that bingo is getting less out of the hands of the people who could put on an innocent bingo game in the past and more into the promotion by people who could not care less about the charities. They are no more than a front to promote the take they get and the increased expenses to do that. That is why I said that. Perhaps you do not have that problem yet in your locality, but it is certainly becoming more and more evident to us.

I think that is an example. These things are entirely innocent in themselves, but they seem to attract the people who want to make a fast buck, who see an angle and want to promote it and, if possible, control it. That is the danger. Mr. Breithaupt jokingly said at one point that perhaps the province should set these up like liquor stores, and we could have--

Mr. Breaugh: Don't even suggest that. If these guys think there is a pile of money in it, as there is in the Liquor Control Board of Ontario, there will be a province of Ontario video game parlour.

11:50 a.m.

Mr. Wallace: The question is how to deal with something that is admittedly an attraction to a wide range of people and protect people from themselves or from getting into a situation where, unknown to them, they are walking into a highly organized and controlled situation. In our application, we are talking about three or more machines being an amusement arcade.

What I am saying is that you are seeing arcades with 50 and 60 and 70 and the kind of intense promotion and the kind of money that is involved in that. To have that many machines, they have to make a lot of money. They have to promote it, and what does that lead to?

What I am saying is, I do not want to sound like I am against sin or something like that, but the fact that there is lots of money involved demands more control and regulation. It is the same with the bingos. They used to be an amateur thing and fairly innocent, but I think it is getting to the state where there is a lot of money and therefore you need more care, regulation and control of it. I do not know how else to answer you.

Mr. Chairman: Thank you. Mr. Breithaupt is next, and we have four people, Breithaupt, Epp, MacDonald and McLean, who wish to ask these witnesses something. Could we aim at 12:30 a.m. for these people, keep it to 10 minutes?

Mr. Breithaupt: Mr. Chairman, I just want to review the two themes in the presentation with the parliamentary assistant so we have a sense of exactly what conclusions have been reached by the ministry in this matter. To do that, I have six questions to put to Mr. Rotenberg to see whether I have understood what the ministry proposes.

The first one is to review the theme that zoning is to prohibit and licensing is to regulate and that, therefore, first of all, from the zoning point of view the municipalities can do

now what the proposals with respect to controlling the video game aspects are proposed in the private bills that we have seen from Windsor and Kitchener.

Mr. Rotenberg: Except for two things. They cannot deal with pre-existing ones and the zoning cannot deal with age of participants or employees which some have requested. Zoning cannot deal with the number of arcades. In other words, what Metropolitan Toronto is asking, as it has in the body-rub or the stripper regulation, is that it can say there can be only so many video game parlours in the municipality; they become rationed as strip joints do or taxicabs do. That they cannot do under zoning.

Mr. Breithaupt: All right. So the city of Toronto in its bylaw now dealing with distance between locations or distance from a school is able now to do that through the general powers it has, as the courts have found, and other municipalities can do it as well if they choose to pass that bylaw.

Mr. Rotenberg: A number of municipalities have done it in one form or another. Yes, they can do that, but again the point I think that is being made by the deputation is they do not catch pre-existing, legal, nonconforming uses.

Mr. Breithaupt: That is my third theme, that the nonconforming use, in effect the operation by the person who has moved into an otherwise vacant store or who has set up in a plaza, could not in any event be dealt with by the municipality unless the video game theme is included under the body-rub style of situation where a municipality can prohibit as well as regulate.

Mr. Rotenberg: That is mostly correct. I am thinking of a particular example which probably went before the courts. It was in North York. Under the zoning bylaw, a property owner can do only those things which a zoning bylaw allows. It is not that they cannot do those things unless they are prohibited. It is a permissive situation.

There may be cases, depending on how an individual municipality zoning bylaw is written. I have not read Windsor's or Kitchener's, but I have read the North York one, and there is a case being made that, under the way the existing bylaw is written, because it defines places of amusement allowed in certain zones, and places of amusement defines bowling alleys, billiard parlours and three or four things and does not define video game parlours--a case can be made, legal opinion has been said, that because a video game parlour is not a permitted use and because other particulars take away from the generality, possibly some of those are there now illegally.

It may be that individual bylaws will have to be looked at. I do not know whether in these municipalities bylaws are written in a particular form where someone could say: "Wait a minute. These people are not there legally." But in the case of North York, a case which will shortly go to court, it was one of the ones that got in there before the new bylaw prohibited them, or the new bylaw zoned them only in industrial areas and shopping plazas. There is going to be a court case as to whether the one

that got in before that was there legally or not. That would be a very interesting case to look at. That is because of the way the North York bylaw was written particularly. There may be some areas where pre-existing uses are not legal nonconforming; they may be illegal nonconforming uses.

Mr. Chairman: Mr. Rotenberg, for clarity, Mr. Breithaupt's general statement was correct, that existing nonconforming uses of pinballs are not being touched under the existing Bill 11.

Mr. Rotenberg: That is correct.

Mr. Breithaupt: The fourth point deals with the private legislation we have seen on this theme in the contents of Bill Pr6 from Windsor and Pr13 from Kitchener. As I understand it, from the ministry's point of view, the granting of private legislation in effect in those areas, for the variety of reasons you have reviewed, is not favoured and therefore the government does not wish to have these themes in private legislation withholding, of course, the possibility that it may come in generally or may not depending on a decision in the future.

Mr. Rotenberg: If that is the government's point of view, all the municipalities have put in private bills which share the point of view. Our point of view is that, if there is going to be any legislation in these matters, and I will outline the decisions we have to make in a moment, it should be in general legislation.

If we are going to allow it in private legislation, we would allow it in general legislation. If we are going to recommend certain things in the Windsor or Kitchener bill, there is no reason why we would not recommend it for the total province. I do not think Windsor, Kitchener, Mississauga, Metro Toronto or anybody would object if it were in general legislation rather than specific legislation.

Mr. Breithaupt: But at this point, I understand--

Mr. Rotenberg: We don't recommend private bills.

Mr. Breithaupt: --you are not going to recommend that the justice committee support those themes in the two private bills.

Mr. Rotenberg: No. If we are going to recommend those themes, we will recommend them for general legislation.

Mr. Breithaupt: All right. We get to my fifth point then, and that is with respect to an amendment--

Mr. Chairman: One point, very minor: Do you use Bill Pr13 as Kitchener or Bill Pr33? The Pr13 is the Toronto demolition bill we are dealing with.

Mr. Breithaupt: I am sorry.

The next point is the amendment to cover this theme as far as including the video aspect in section 4 of the bill that is before us is concerned. What is the intention there?

Mr. Rotenberg: As I indicated when I first commented, the bill as written had nothing in it about video games. I discussed this with the minister and our staff. As a result of these hearings, we are going to be prepared to have another look at the video game problem as to whether the government will be recommending some or all of the themes before us.

Although we will not be dealing with clause-by-clause probably until some time late in the fall, I think as a result of what we are hearing today, and will be hearing from the video game operators and from Metro who are involved in this as well, after all the hearings, there will be a number of questions which I would, not by vote, but at least get some kind of feeling of the committee. I can sense there are different opinions of different members of the committee.

Basically, there are four questions about which I think the committee has at least to give an indication. First, should the powers to prohibit which are in the zoning bylaw be extended in the licensing act? The effect of that is that under the zoning bylaw there has to be a bylaw passed, Ontario Municipal Board hearings, public hearings. Licensing bylaws can be done arbitrarily without public hearings and without any appeal.

Second, should any powers be extended to be able to take away pre-existing video game parlours which were there before the legislation?

Third, should there be some regulation as to the age of the participants, that is, prohibiting people under 16 during school hours and that type of thing?

Fourth, should a city be permitted to regulate the total number of video game parlours in a municipality? They not only have the distance problem, but can they say in Kitchener there can be no more than 14 video game parlours? That is something Metropolitan Toronto has asked.

Those are basically the four questions which I think we are going to have to consider, because they are the basic questions that have been made. At some stage, but not this morning, after we hear everybody, I think there should be maybe not a voting committee or resolution, but I would like to get some feeling of how the committee members feel. We will not necessarily base our decision on that, but it will certainly influence the decision we make in the ministry in reviewing this.

12 noon

Mr. Breithaupt: My final point on this theme is that if general legislation is going to deal with the video game concerns, however they may develop, and where we have this proposal from Metro council for its suggestion for an amendment to the Municipal Act, am I correct in saying that while you are going to consider

those themes for possible action, you are not prepared at this time to include them in Bill 11 as it is before us now?

Mr. Rotenberg: My understanding of the schedule is that next week we will finish all the public hearings, and that is the only time we have for Bill 11. We will not be doing the clause-by-clause in these two weeks. We are doing that when the House comes back in October.

Mr. Breithaupt: So there might be the opportunity?

Mr. Rotenberg: No, not might be. If there are going to be any recommendations for additional legislation on video game parlours, we will be recommending them for inclusion in Bill 11.

Mr. Breithaupt: Good. That is what I wanted to know.

Mr. Rotenberg: That will be part of our clause-by-clause discussion. As Mr. Epp, Mr. Breaugh and others know, we did that in the Planning Act. It is my intention and the ministry's intention that, when we come into the clause-by-clause, we will bring any suggested recommendations for amendments to the committee and circulate them--

Mr. Breithaupt: And you will advise the committee at that point whether you intend to proceed or not?

Mr. Rotenberg: Yes. We will give the government position on that.

Mr. Breithaupt: As a result, then, we will be able to deal with the two private bills that are before us, at least for the other matters they contain, to square that up.

Mr. Rotenberg: To make it very plain, we feel anything in video games should be in general legislation. I don't think any municipality would complain about that.

Mr. MacQuarrie: It is my understanding, and I can be corrected if I am wrong, that next week, after we finish with the delegations, we will have a sort of round-table review without doing clause-by-clause, at which time you will be giving some indication of the amendments or changes you think might be appropriate.

Mr. Rotenberg: No. I don't think I would be prepared at that time--

Mr. Chairman: I think he said he wished the members to give him a straw vote or a consensus at that time, sort of a wrapup from us to him, rather than from him to us.

Mr. MacDonald: Subsequent submissions may come from--

Mr. Rotenberg: Yes. As the CMA said yesterday, it may bring further submissions to the ministry and to the committee for our consideration. Again, taking the analogy of the Planning Act, I don't want to make snap judgements on these things as a result

of hearings. We want to go back and review as a ministry. I think the purpose of these hearings is to hear submissions from the public, the municipalities and other people. The whole point of these hearings is that, if we are going to give any consideration to them, we have to get some time to look into the ramifications of the various suggestions that have been made.

I don't think it would be an advantage to this committee or to the Legislature or to the public if I or the ministry were to make any snap judgements next Thursday after we have heard all the submissions.

Mr. Breithaupt: As I see it, that completes the situation with respect to the arcades and how the private or general legislation may eventually be dealt with.

Having put that aside, the only other point I have is the matter of the fee for hawkers' and pedlars' licences. Are you able to tell us at this time, with respect to clause 2(5)(b) and the \$25 rate, what considerations you are now making, as you have seen the suggestions brought forward, of having a much higher range of fees? This would balance up, at least in the minds of the council in my city of Kitchener, and give a better sense of proportion, in regard to these particular day, truckload sales that occur not only in our community but also obviously in many other communities.

Mr. Rotenberg: Again, I would not be prepared at this time to make a decision on whether we are going to change the present act, which does not allow that. It is something we have to consider.

Also I think the committee, at the end of the session, should be giving some opinions, because we do value the opinions of the other members of the Legislature, as to the problem of whether to regulate them or to prohibit them. The municipalities really want to prohibit them. As I said earlier, I think it can be done with zoning. If they want to regulate them and allow them, then should they be considered separately for fees as taxis are and entertainment parlours, where fees go beyond cost recovery?

Do we want to make a special exemption for hawkers and pedlars and one-day sales to have a higher fee? Not in this act, but do you want the ministry to consider, as someone suggested, that there should be some legislation, which would be somewhat complicated and difficult--I am not sure it could be done--to have a special business tax imposed on these people which would be awfully hard to collect? That is distinguished from licensing because it is a different philosophy, but it may be accomplished in the same situation. It has been raised as a legitimate problem we will have to consider and make a recommendation on, but it will not be made during these two weeks of hearings.

I would like to get some feedback, before the two lawyers go away, as to whether the ultimate thrust of their goal on the hawkers and pedlars is to get a higher fee or, if they want to go the other way, if they agree with me, and just want to prohibit them. What are the feelings of the councils out there? I think that is something we should know as well.

Mr. Breithaupt: From the comments made, at least through Mr. Wallace's presentation, the theme is not one of prohibition. They are trying to strike some sort of balance that will be found to be much more acceptable to the other merchants in the community, recognizing that the consumers, as individuals, have the kinds of interests Mr. Breaugh has pointed out.

Mr. Rotenberg: I get a feeling, not necessarily from these gentlemen, and they may want to comment, but from my own municipality of North York, that there is serious consideration being given to trying get them out. The flea markets come every Sunday and the merchants are screaming. They are trying to prohibit them or ban them.

I get the feeling, not just from these hearings, that there are municipalities and merchants' associations out there that would like these flea markets, fly-by-nights or one-time sales to be banned from the community and not just to be regulated. When we get the Association of Municipal Clerks and Treasurers of Ontario here, and others, we may be able to get more of a feeling on that.

Mr. Breithaupt: If there is anything further to be said, perhaps we could hear it now.

Mr. Wallace: Certainly the council resolution adopted the letter from the chamber of commerce. Their attitude was not absolute prohibition. It was to do something about having an equitable recognition of the tax burden and establishing some kind of fee related to it. They were groping with that when they said "related to volumes of sales," whether that is practical or not.

The easy thing to say would be "prohibit them." But they did not say that. They had these alternatives. They recognized that the country is based on freedom with responsibility. There has to be a certain amount of freedom for merchants and businessmen, but there also has to be some accountability and responsibility. That is the way the chamber of commerce and the council addressed that.

Mr. Rotenberg: Were they aware there would be a possibility of prohibiting, or did they feel they could not prohibit and, therefore, just wanted to charge a higher fee? Was the thought of prohibiting considered and rejected or just rejected because they thought they did not have the power?

Mr. Wallace: I don't think they addressed themselves to the actual question of prohibition. They saw the submissions by the chamber of commerce. They heard what was said. They said: "All right. We see we have a problem. Let's see if we can control it."

Mr. Chairman: Mr. Kellerman, do you have any comment on that?

Mr. Kellerman: No.

Mr. Chairman: Is that it, Mr. Breithaupt?

Mr. Breithaupt: Yes.

Mr. Epp: I have a few questions for the parliamentary assistant and also for Mr. Wallace. You have indicated that, if there is general legislation and, of course, the private bills, some of those aspects may be incorporated in the general legislation. Is there any particular thought being given to the idea that the government will withdraw this bill?

Mr. Rotenberg: Withdraw Bill 11?

Mr. Epp: Yes.

Mr. Rotenberg: Oh, no.

Mr. Epp: You intend to proceed with it and maybe make amendments to what is before us.

Mr. Rotenberg: The basic thrust of Bill 11 is, in effect, to rationalize the whole licensing system and make it a better system for municipalities. I get the impression that general thrust is reasonably agreeable to the committee. There are some details committee members feel they may want to change, but I have not heard anyone say we should go back to the old system with 66 different sections of the Municipal Act and just leave it the way it is.

Mr. MacDonald: Even its most vigorous opponents concede that it is likely to come.

Mr. Rotenberg: There is no thought of withdrawing it, though. As I indicated yesterday and today, we are going to give thought to changing certain aspects as a result of these hearings.

12:10 p.m.

Mr. Epp: With respect to some of the points that were raised earlier about video game parlours and corner stores which sell Wintario and so forth, is there anything in the bill that would permit municipalities to control the sale of Wintario tickets and so forth, as the legislation is now drafted?

Mr. Rotenberg: As the legislation is now drafted, if there was a business of lottery sales, as distinguished from a business of lottery sales being an auxiliary use to a corner store, in other words, a place that only sells lottery tickets, municipalities could license them, but they could not prohibit them.

Mr. Epp: So they can regulate them.

Mr. Rotenberg: They can regulate them; but again they can license the corner store--the convenience store--that sells milk and bread and all sorts of other things. Selling lottery tickets is one of the uses of the convenience store. They certainly could not prohibit any store from selling lottery tickets. They could not do anything that would conflict with provincial regulations which regulate where they are sold.

Mr. Epp: What they could do is say, for instance, that

only Mac stores could sell Wintario tickets?

Mr. Rotenberg: No.

Mr. Epp: They could not do that?

Mr. Rotenberg: One of the philosophies of this act, and something we will not retreat from, is that there cannot be monopoly provisions in this thing, except that we made the exception of taxicabs and adult entertainment parlours. We can regulate the total number in a municipality. Other than that, you cannot put things in that make monopolies, such as saying only 42 places in Kitchener can sell lottery tickets.

Mr. Epp: Can they zone it that way?

Interjections.

Mr. Epp: In view of what you said earlier that municipalities, through the new Planning Act, that they can--

Mr. Rotenberg: I would suggest that a lottery distribution centre could be a use in the Planning Act and could be zoned as such. For the corner store which just has one little green box, I would question whether you could prohibit the sale of lottery tickets as an auxiliary use in a convenience store.

You could zone lottery parlours, and there are a few of them, where the main business in that store is selling lottery tickets. That could be handled by zoning.

Mr. Breithaupt: But the lottery is a monopoly itself. You are not prepared to--

Mr. Rotenberg: That is handled under the Ontario Lottery Corp. It handles that.

Mr. Breithaupt: They would never let go of that.

Mr. Rotenberg: No. We are not allowing monopolies of anything in licensing. That is not to be permitted.

Mr. Epp: You would not permit municipalities, for instance, to get in on the licensing fees there and get some of the take, would you?

Mr. Rotenberg: They could not get a percentage of the take. They could charge a \$10 fee for a cost recovery for a lottery store.

Mr. Epp: And the inspections?

Mr. Rotenberg: Yes, if there were inspections required. You cannot have the harassing kind of inspections which are just for the point of view of raising money.

Mr. Epp: Can they hire consultants?

Mr. Rotenberg: That was raised yesterday. I would very much doubt whether a consultant could be added in as a cost recovery.

Mr. Epp: You would probably bring in retroactive legislation to forbid municipalities to do that.

Mr. Rotenberg: No, we certainly would not forbid them to hire consultants. There has been some suggestions, as made yesterday, to consider having a slightly better definition for cost recovery so it is true cost recovery for the administration of licensing and not for things which properly under fall building bylaw, health, zoning, safety and so on.

Mr. Epp: Everything that you are saying today, you are saying on behalf of the minister; is that correct?

Mr. Rotenberg: Yes, it is on behalf of the minister and the ministry.

Mr. Breaugh: Who is the minister?

Mr. Epp: Getting on to another aspect, you mentioned earlier earlier that one way to control things is through licensing and another way is through zoning. Then if the kids go down to a video game parlour, or something of that nature, you can control them through truant officers.

Did you have anything in mind, aside from the regular truant officer going down there and getting them out, and so forth, and taking them to school? What were you thinking of in terms of the truant officer?

Mr. Rotenberg: I was not thinking of anything as far as this bill or as far as our ministry is concerned. I was simply saying that under the Education Act, the truant officer has certain powers now, which Mr. Breaugh could probably tell us much better than I can. He has certain powers to go down to a video game parlour or anywhere else and enforce the Truancy Act.

Mr. Breithaupt: It used to be down to the old swimming hole.

Mr. Rotenberg: Mr. Epp, I was mentioning that only to say there are now powers under other legislation to get the kids out of video game parlours and back into school. I am not suggesting in any way that there would be anything put in this bill or any other municipal bill to strengthen that or do anything with it.

Mr. Epp: But only to the point of going down there and getting the kids out and taking them to school.

Mr. Rotenberg: Whatever the Education Act is. I am not familiar with the details.

Mr. Epp: I have a few questions for Mr. Wallace. One has to do with the example he gave earlier with respect to Kitchener

and the sale of art and the people being able to go to Waterloo and sell the same art.

The problem is that if Kitchener had a bylaw which was fairly uniform with that of Waterloo, then of course they could always go down to Cambridge or they could just go next door to Woolwich township, Wellesley township or North Dumfries. If you had something in Toronto, they could go to Scarborough or Etobicoke or somewhere of that nature.

Have you given any thought to making some of these things more uniform, or are you just interested in controlling them in your own municipality? As we know, with all these municipalities in Ontario--more than 800--it is so easy for someone to take his business just next door and then operate from the other municipality. Of course, Kitchener-Waterloo is a good example of that.

Mr. Wallace: To give the committee the benefit of our experience, I suppose what I am trying to say is what we have found is that in that particular situation the requirements in our application form led the chap to leave the community altogether. He went where he did not need to worry about application forms, or that sort of thing. In my way of thinking, that cries out for uniform legislation province-wide because, if you are having people come in from another country and going around ripping people off, there is no reason not to make it uniform across the province. Presumably you do not want that kind of thing to take place anywhere within the province, and it just so happened that they were lucky enough to catch him in Waterloo. As I say, in another situation, an internationally wanted person was apprehended, again because of our application form.

It seems to me it is desirable from a provincial point of view that these things be spelled out and that there be uniform application forms so we do not get into the situation where we have got it and another municipality does not have it. We have not had to do it yet, but we may very well get into court where we would have to defend the kind of questions we are asking and whether we can compel somebody to answer them and whether we can refuse the licence because they did not either answer it truthfully or they did not answer it at all and so on.

I do not see why any particular municipality has to bear the cost of that sort of thing which is in the public interest. I think from a provincial point of view you do not want that kind of thing to go on. You certainly do not want people anywhere to be ripped off by people coming in from another country with goods that were presumably smuggled in. I am not sure but the customs and immigration people were there. The income tax people were there. There were about four police agencies all involved in that situation and he had apparently got as far as Waterloo, coming in from Windsor.

Mr. Rotenberg: A brief supplementary on that. Are you suggesting that in certain situations licensing should be made mandatory, not permissive? That's the thrust I get, that every municipality must license these people rather than permissive legislation.

Mr. Wallace: What you are saying is we have the power to license businesses. We can license any business. Presumably we do not have to license businesses. What I am saying is that our experience has shown that it would be a good thing to assume the responsibility to license businesses because, in doing so and in the requirements we have set out, we have managed to apprehend people who would victimize the people in our municipality.

Mr. Rotenberg: I understand. All I am asking is, do you think it should be mandatory for municipalities to license these kind of things?

Mr. Wallace: Yes. I think--

Mr. Rotenberg: Every municipality must require licenses?

Mr. Epp: In fact, I think we are getting at two things here. Earlier, Mr. Wallace, you said that you almost think it should be provincial legislation for some of these things. In that case, you are not--

Mr. Wallace: What I am saying is that I think that in the public interest there should be a minimum amount of information required for anybody doing business anywhere in the province that has to be on file. I think what you have now when you do not have uniformity is you have each municipality going off on its own, deciding what it is going to license and what it is not going to license and what information it requires, and then there are people who are smart enough to take advantage of only going to the places that do not look after themselves, that do not take care to make inquiries.

12:20 p.m.

Mr. Epp: I think I know what you are saying, but how do you control the garage sale? You are talking about the guy who comes over the border and is selling all this artwork. I can appreciate that; there should be some control. But when you say that for every form of business there should be a basic or minimum amount of information, how do you control the garage sale or the bake sale?

Mr. Wallace: The only thing I can suggest regarding garage sales in particular is that the problems arise in the United States about two, three or four years earlier than they arise here. Then they come across the border and we get into the same things.

A lot of municipalities in the United States have passed bylaws regulating garage sales because they have found that is where the stolen goods go. Stolen goods are fenced through garage sales. They have regulations for garage sales. They do not impose restrictive licensing fees, but they require certain minimum information from the owner of the house where the sale is.

They limit the size of signs, they limit the number of sales and they allow police inspectors to go on the property, if they are going to hold a garage sale, and inspect the goods so they

make sure there are not any stolen goods being sold. The situation is that they have seen the problem and they have legislated for it.

As I say, these problems come along here several years later. They have already done this in the United States. I think there should be certain basic information that people should have to provide if they are going to go into business. Why should they object to it?

Mr. Epp: What you are suggesting now is that, if the licensing responsibility is given to the municipalities, there should be a uniform application form that all municipalities have similar to, for instance, uniform forms that we have with respect to the Residential Tenancies Act, things of that nature, applications forms for apartment leases, etc.

Mr. Wallace: I think if you do not do that then you have exactly the situation where one municipality goes in one direction and another municipality goes in another. Certainly, if you are going to discourage people from taking advantage of consumers, that is one way to make sure that no matter where they go there has to be at least a minimum of information required from them.

That rubs a lot of people the wrong way, because they say, "That is an infringement on my freedom to do business anywhere if I feel like it without giving any information, except to the income tax department or the retail sales tax people." Why should those departments get the information? Why should it not be legitimate for a municipality to know who is doing business within its area?

Mr. Chairman: Excuse me; we have a little problem. I would like the direction of the committee. Mr. McLean and Mr. MacQuarrie wish to ask these gentlemen some questions. Mr. MacDonald had to go. But if they were going to come back, they could come back after lunch. Mr. MacDonald would ask them a couple of questions. What does the committee wish to do and what can these gentlemen do?

Mr. Breaugh: Do we have witnesses scheduled for this afternoon?

Mr. Chairman: Yes. We have the Association of Municipal Clerks and Treasurers of Ontario.

Mr. Breaugh: Why do we not have Mr. McLean, who has not had the chance to ask some questions this morning, do his bit and then adjourn?

Mr. Epp: I have one short question.

Mr. Chairman: Fine; I am just pointing out that that one short question and several here and so on will run the clock. What--

Mr. McLean: Mine will not take two minutes.

Mr. Chairman: Fine.

Mr. Epp: I will be short.

Mr. Breithaupt: Yes, let us see if we can clear it up then, because it would save having to spend the day.

Mr. Chairman: Everybody says he will be short. We will bet on that also. Carry on, Mr. Epp.

Mr. Epp: Mr. Wallace, yesterday one of the examples that was raised was that of plumbers. Plumbers are licensed provincially. According to this act, if implemented, municipalities would have an opportunity to relicense and reinspect, whatever they wanted--not to relicense, but to check on the quality of work, etc.

How do you see the transfer of responsibility from the province with respect to plumbers or other groups that are licensed provincially and all of a sudden the municipalities get involved in some form of regulation or control? Is this a healthy situation? Or would you prefer that if there is additional regulation and they are already licensed provincially, the province continue to regulate them if there is regulation?

Mr. Wallace: From the experience we have in Kitchener, I guess all I can say is we now have the electricians we deal with. When I came with the city, the very first week I was there we had a problem with the electricians. Somebody within the town had not been licensed to be an electrician and, of course, the other electricians immediately came marching in and said, "What is this fellow doing being an electrician when he has no right to be an electrician?" It was sort of self-policing.

With the electricians, we have been able to deal with that and that is no problem. Presumably, if we got involved with the plumbers, again there would be no problem. That is fine for the city of Kitchener or maybe for some other cities that have the staff, the people who can get involved in it. All I can say is for the electricians it worked out all right. We have the staff and we can deal with it.

Depending on the municipality, when they are dealing not only with that trade but maybe two or three other trades as well, what that does again to the costs, which in turn reflect on the tax base and everything, is a whole other issue as to whether it is fair to put that on a municipality. Some municipalities can handle it and others cannot. I think there again your uniformity is going to go out the window.

Mr. Chairman: Mr. Kellerman had something to add to that.

Mr. Kellerman: I have nothing, Mr. Chairman. I was just going to ask that at the end I be permitted two or three minutes.

Mr. McLean: Mr. Chairman, I have a couple of questions I wanted to ask the gentlemen. This morning I think we pretty well dealt a lot with Pr6 and some on Bill 11. We have had some witnesses before us who have indicated that Bill 11 has been far too restrictive. I do not think we have gone way too far in licensing and regulating. I would like to know your opinion on that aspect of it.

The other aspect I wanted to find out from you is you have indicated before that you would probably like to see the arcade and the museum part included in Bill 11 or in a separate bill. I would like a quick highlight of where you see Bill 11 as it stands.

Mr. Wallace: First, the instructions I have from council basically on Bill 11 stressed that their concern was the hawkers and pedlars. Basically, the council has really accepted the rest of the bill as it stands.

As to whether the restrictions in it are adequate or inadequate--as I say again, voicing what council has felt, it feels that it seems to be generally satisfied with Bill 11 except for the hawkers and pedlars aspect of it where it feels it is not a question of licensing fees reflecting costs, but licensing fees acting as a deterrent and really getting at the whole--I suppose the dictionary meaning of licensing is to permit something, whereas the whole thrust of this bill is to be more permissive than heretofore.

The approach of the business community as far as hawkers and pedlars are concerned is not to be permissive; it is to look at it in a regulatory prohibitive way because of the pinch they are feeling.

12:30 p.m.

I think there were things that, in the Municipal Act as it stands now, perhaps did not have much relevance to the city of Toronto, to Metro Toronto, and maybe people do not run into them very often; but for some of the outlying areas I think there were things in the Municipal Act that still had some relevance. But that does not seem to have been very much a problem as far as our council is concerned. They seem to think Bill 11 is fine the way it is except for the hawkers and pedlars.

Mr. McLean: Then do you feel that the arcades and amusements should be part of that bill or separate legislation?

Mr. Wallace: Speaking personally, I think the problem is province-wide and should be part of Bill 11. I think the reason council instructed me to apply for private legislation is that they felt nothing was being done, and they looked around and saw that Windsor was applying for private legislation and said, "Well, you go after the same legislation as Windsor is going after, because we think we need it."

Mr. MacQuarrie: Further to Mr. McLean's line of questioning, we seemed to spend an awful lot of time this morning on hawkers and pedlars and amusement arcades and got away from some of the criticisms directed at the bill from previous delegations.

I am asking you two gentlemen, as experienced municipal solicitors, to comment on some of the criticisms that have been directed at Bill 11. I take it from your earlier remarks that your council by and large supports Bill 11 and would like to see it expanded if possible to cover the two areas we spent so much time discussing.

They said, for example, that too much power was being given to the municipalities, that giving this power to the municipalities left the way open to potential abuse. They said also that in some instances municipalities lacked the competence to properly regulate certain trades or callings. There were instances of tradesmen and types of business that were raised, particularly the larger types of business. The parliamentary assistant indicated that he would look again at manufacturing concerns. Another question was asked, "What would Sudbury do with licensing Inco, or Oshawa licensing General Motors?" The same sort of situation could conceivably apply in Kitchener.

They also were concerned in dealing with the question of charges that, in addition to the minimum and maximum provided in the bill, there was also the escape clause that a municipality could levy by way of licence fee a sum equal to that expended in enforcing and administering its licensing powers.

They indicated too that certain businesses carrying on business in different jurisdictions could be faced with a different licensing process in each jurisdiction, that under the present permissive legislation there would be no uniformity of application; and you touched on that briefly just a few moments ago.

They expressed concern in these areas, and there certainly were other areas that they touched, but I think I have covered the main ones. I was just wondering what your comments were on that. Some of us, I know, have taken the position that municipal councils, to the best of our knowledge, have always acted responsibly and in the best interests of their communities and that sometimes, certainly, they might appear to be acting against the best interests of an individual but that individual always had recourse.

There were questions about the appeal procedure set out in the act such as whether it should go to a committee of council or to the Ontario Municipal Board.

I would like you gentlemen to comment on some of those criticisms that have been directed by two very responsible groups. Does that cover it pretty well?

Mr. Kellerman: If I might respond to that, Mr. Chairman, licensing under the Municipal Act is a matter of regulating specific trades, and if there was no power in the Municipal Act, it could not be done. This proposed legislation is to permit licensing of almost any type of business.

The hypothetical question raised about licensing General Motors or Chrysler is something I frankly had not even thought of as part of the normal municipal licensing function. As I see it, licensing is really to regulate those types of activities that can create a nuisance and in many ways to alleviate the nuisance. As an example, for a junk yard, the normal licensing requirement is for the construction of a fence around the premises.

My own experience with municipal councils is they will not

really react unless there is a problem and they have permissive legislation. Only if objections come in to the council will the members of council consider regulating or expanding the field of regulation. The act is either directly or indirectly put together so that it is self-regulating in that there is no point in expanding their licensing field since there is no additional revenue to be received. The sum of \$25 is certainly not going to be used as an indirect taxation in the municipality.

Mr. MacQuarrie: The alternative means of setting fees was the one that really troubled them in that the cost of administering, operating and enforcing could assume quite large proportions, for instance, if they decided to call in a consultant to see if the proposed method of operation of a certain firm was satisfactory.

Mr. Kellerman: I just have not considered expanding licensing in that direction. Your concern about licensing an operation such as General Motors or Chrysler is that these corporations have the financial sinew to challenge any licensing bylaw immediately if they feel their businesses are being infringed upon. I cannot speculate on whether those who do not have the financial resources of Chrysler are going to allow themselves to be regulated beyond what was envisaged by this bylaw.

It has been my feeling that a municipality only reacts; it does not go out to expand its function. I think this will probably be the answer and that it is a matter of allowing the legislation to go forward and--

Mr. MacQuarrie: Is this why Kitchener's bylaws are a lot more elaborate, shall we say, than Waterloo's as far as licensing is concerned?

Mr. Brandt: They have a good mayor in Kitchener.

Mr. Breithaupt: Yes. We have all run against him. I was thinking of (inaudible) in Waterloo, as a matter of fact.

Mr. Kellerman: It may be, Mr. Chairman, that those activities which agitate the residents of Kitchener do not agitate the residents of Waterloo. Those are my personal observations.

Mr. Breithaupt: Under general legislation you don't expect your municipality is going to license any more themes than the pretty large variety that are already allowed under the specifics of the present Municipal Act.

Mr. Kellerman: I really can't see that the issuer of licences is going to go out and try to expand the function unless a complaint comes in to him. Then he will then recommend an extension of an existing licence.

Mr. Rotenberg: With your knowledge of what is going on, with all the present 60-odd permissive things in the act, have you any knowledge of any municipal abuse of the broad powers they have now under licensing?

Mr. Kellerman: I don't have any knowledge. It is up to whoever feels he is abused to bring an action to the courts to quash the bylaw that exceeds the jurisdiction.

Mr. Breithaupt: Does anybody use every category now?

Mr. Rotenberg: I doubt it. Metro uses more categories than anybody, and I don't think they use every category.

Mr. Wallace: Just quickly, you talked about renovations and so on and how municipalities might jump into this to do it. That ties in with a current discussion that is going on in the city of Kitchener right now. There is a proposal that we bring in a renovators' bylaw, which has gone to committee. As it stands now, it would appear we are not going to have a renovators' bylaw, even though it was considered. I think that demonstrates that generally, I sense council not wanting to jump into these things and regulate everything just because it has the power or thinks it has the power. I think there is a certain amount of reluctance to do that at the local level. I think councils are very sensitive to the criticisms you have put forward that municipalities are given too much power. I do not think local councils work that way. I think they are very sensitive.

Mr. MacQuarrie: I think that local councils, by and large, act responsibly and reasonably.

Mr. Chairman: Does that finish your questions, Mr. MacQuarrie?

Mr. MacQuarrie: Yes.

Mr. Chairman: Mr. Kellerman, would you wind up please.

Mr. Kellerman: If I may, Mr. Chairman. I adopt generally the argument of my friend, Mr. Wallace, with respect to licensing for amusement arcades. I certainly would agree with him that I would prefer to see it as part of general legislation and obviate the necessity of carrying on with this private legislation. With respect to amusement arcades, the main concern of the city of Windsor is the attraction to children of video games that can consume a great deal of money very quickly. You have heard the problems created of children either using their lunch money or stealing.

This is an attempt to control it by setting a suggested limit no closer than 250 metres from a school, and a limited prohibition that no person under the age of 16 can go into an amusement arcade unless accompanied by an adult, parent or guardian. Also, we are trying to ensure that whoever controls the arcade shall be at least 18 years old and will obtain some type of respect or control over those who come into the arcade.

Briefly, one other issue briefly is that there is a conflict provision in the proposed legislation on page six. Windsor has a provision for, in the first instance, an issuer of licences who, if all the conditions are met, can then issue the licence. If they are not met, the applicant has an appeal to committee and then to

council. I would think, in the case of Windsor, the conflict situation would allow the continuation of that proposal, but you may wish to consider adding it to the general legislation to provide for the establishment of an office of issuer of licences in the first instance.

Mr. Rotenberg: Would that be necessary?

Mr. Kellerman: It is a question of delegation. I would think it is a question of whether this act permits the delegation of purely an administrative act. I suggest that in order to prevent any conflict between the city of Windsor's special legislation and the general legislation, the committee consider that area and provide for an issuer of licences.

Section 3 of the City of Windsor Act, which has not yet been considered by this committee, provides the right of the issuer of licences to suspend a licence for a short period until the appeal committee can be called in for a sitting. In an emergency situation, that will allow him to suspend that licence.

Mr. Chairman: Thank you, Mr. Kellerman. I know the parliamentary assistant was trying to get some advice. Mr. Kellerman's last point was section 3 of the Windsor bill about giving that licence issuer the right to suspend. Could you respond quickly to that? I know you dealt with it yesterday.

Mr. Rotenberg: As far as the right to delegate the authority to issue a licence is concerned, we think it is okay but we will consider it.

As far as the right of a municipal employee to suspend a licence without an appeal is concerned, this is something we have some considerable difficulty with as I indicated when the bill was before us. We will have to look at that aspect. Once a man has a licence he should not be suspended without having a hearing. That is something we will look at again.

Mr. Chairman: Mr. Kellerman, it was dealt with yesterday; this question of delegation and how far the delegation did go from the municipal council. They probably had that marked down from yesterday. Your point is well taken on that. Those were from people who look at the bill from a slightly different perspective than you do.

Mr. Rotenberg: We do not think there is any problem with having a licensing issuer, a clerk who does it. We do not think there is a problem if council says a person who meets all the qualifications gets a licence automatically unless it is appealed; but we will check it.

Mr. Chairman: Gentlemen, thank you very much for your assistance and for coming here. Shall we adjourn until two o'clock when we will have the Association of Municipal Clerks and Treasurers of Ontario?

The committee recessed 12:47 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

MUNICIPAL LICENSING ACT

THURSDAY, JULY 15, 1982

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breauth, M. J. (Oshawa NDP)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Epp, H. A. (Waterloo North L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Eakins, J. F. (Victoria-Haliburton L) for Mr. Elston
MacDonald, D. C. (York South NDP) for Mr. Swart

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of
Municipal Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

From the Ministry of Municipal Affairs and Housing:

Noble, W., Adviser, Functions Policy Section, Local Government
Organization Branch
Sypnowich, M. A., Manager, Functions Policy Section, Local
Government Organization Branch
Tomlinson, J., Solicitor, Legal Branch

Witnesses:

From the Association of Municipal Clerks and Treasurers of Ontario:
Bayne, B. D., President; Clerk Administrator, City of Orillia
Gunning, G. E., Secretary-Treasurer
Nigh, J., Chairman, Advisory Committee of Municipal Clerks; Deputy
Clerk, Borough of Scarborough
Woadden, R., Vice-Chairman, Advisory Committee of Municipal
Clerks; Deputy Clerk, City of Toronto

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, July 15, 1982

The committee resumed at 2:12 p.m. in room 151.

MUNICIPAL LICENSING ACT
(continued)

Resuming consideration of Bill 11, An Act to provide for the Licensing of Businesses by Municipalities.

Mr. Chairman: Gentlemen, seeing a quorum present, might we carry on with the witnesses from the Association of Municipal Clerks and Treasurers of Ontario? Messrs. Bayne, Nigh, Woadden and Gunning, could you please take those four seats by the microphones?

I apologize for the tardiness of the committee getting here. We did run fairly late, until nearly one o'clock this morning with the Windsor and Kitchener solicitors.

Interjection: One o'clock this afternoon.

Mr. Chairman: This afternoon, correct.

Mr. Chairman: Gentlemen, if you take a look at your desks, there is a brief with a yellow cover from the Association of Municipal Clerks and Treasurers of Ontario. Please mark that as Exhibit 8. Who is going to be the primary spokesman?

Mr. Bayne: Mr. Chairman, my name is Bruce Bayne, and I will be speaking on behalf of the association.

Mr. Chairman: Do you want to identify yourselves from left to right?

Mr. Gunning: I am Mr. Gunning.

Mr. Chairman: And then Mr. Bayne.

Mr. Nigh: I am John Nigh.

Mr. Chairman: Mr. Nigh and then Mr. Woadden. Thank you. Carry on.

Mr. Bayne: Mr. Chairman, we appreciate the opportunity of being able to appear here this afternoon and to present a brief on behalf of our association. I am not terribly familiar with the procedures here. We have a written brief which I can present to you or I can comment on it. Perhaps a few opening remarks might be appropriate.

Mr. Chairman: Perhaps it would be better if you could highlight rather than simply reading it. Highlight it and underline the various portions and refer to it. You will sort of

make a presentation and then the committee members will ask you and the parliamentary assistant questions. We will carry on in that manner. Other people can help answer the questions as well.

Mr. Bayne: Our association, the Association of Municipal Clerks and Treasurers of Ontario, has been concerned and has been working at this question of municipal licensing for some eight years. We have been involved fairly intensively since about 1974 when we worked with senior members of the provincial ministry to examine this whole question of municipal licensing, recognizing the inequities of existing legislation as perceived by our understanding of the municipal scene, and from our own personal experience as municipal officials.

At that time and in 1976, we reported fairly extensively on this subject. We have included a summary of the recommendations made at that time in our brief. Perhaps some of this may be old hat and old history, but our point is to indicate that we have been working on this problem for some time.

In those recommendations we indicated that we felt municipal licensing should be used for the purposes of regulation rather than revenue raising. We felt revenue raising through this source was not necessarily in the best interests of the municipality.

We also suggested that because of many problems with changing businesses and so on, the existing legislation often identified specific businesses that could only be licensed where the legislation allowed it. New businesses were being established that appeared to require some control, at least initially, and the municipality would either have to consider applying for private legislation to deal with it or wait for general legislation which was often too late. We felt this general authority to license businesses at the discretion of council would assist us to act quickly if necessary.

We suggested that because so much of the legislation was in so many different places it would be important to have all reference to municipal licensing in the Municipal Act as opposed to the many acts it is in now. The new legislation, of course, proposes there be a free-standing act and we do not really have a serious quarrel with that.

We also suggested certain regional municipalities should continue to have certain powers that were specifically of significance to those municipalities where boundary administration was difficult. I recall specifically the licensing of certain carriers and this kind of thing which we felt should remain with those municipalities.

We also suggested in our initial brief that the council be authorized to use some discretion in delegating the actual physical function of licensing. That is often difficult and I believe the existing legislation proposes that council still will be the licensing authority.

We also suggested there be some basic minimum penalties established in any new legislation, because the experience in the

past had been that in certain cases where a municipality chose to take action against someone who was acting contrary to its licensing regulation, often the fines were not a deterrent. We note in the new legislation that the Provincial Offences Act would adequately take care of that situation.

In reinforcing that other position, we felt the legislation should be in one place and not in several different pieces of legislation. We dealt separately with permits. Early on, we suggested that building permits and so on were really not licences in that sense and should not be dealt with in the same area.

At that time, these positions were presented to the municipal liaison committee and the government was made aware of our position. As the committee will know, subsequently this matter has been discussed on many occasions and our brief then proposes to address some of the concerns in some of the earlier legislation.

2:20 p.m.

Some of these matters may not be terribly pertinent to the legislation now being proposed. In our brief we were trying to establish that we have been working on this question for some time and that we had, through our own members, through our association, through our clerks' advisory committee and in looking at the position of some municipalities, addressed the legislation at the time.

If I may, I will slide over that and comment. Our association's position as municipal officials representing the municipal position was that the sundown clause, as we like to refer to it, was not necessary. That was our view meeting our own municipal council's position. However, the legislation does contain that, and we have no serious quarrel with it. We just felt that the municipalities could handle it. We had an opinion from our solicitor that it might be difficult, particularly if there were outstanding matters in the legislation that were before the courts, and that an automatic repeal of licensing bylaws might be a problem. However, I think that can be gotten around, and it is not a serious concern to us now.

Mr. Rotenberg: When we look at that, it will be our intention to clarify it to make sure the repeal and re-enactment do not interrupt any court case. We may have to put some different wording in there.

Mr. Bayne: If that were to happen, certainly we would have no quarrel with it. I know from personal experience in our municipality that we do have legislation on our books that should not be there. It is housekeeping that we sometimes do not get to, and we have no serious quarrel with that as long as it does not interrupt due process.

Mr. Chairman: Might I point out, and perhaps I am remiss, that it is pretty well agreed among the committee that we will not get to clause by clause during the sittings this week and next, so the clause by clause will not come until fall. The ministry is most anxious to hear the presentations, and it then

will go back and do some fine tuning or make some changes. At the end of next week the committee among itself will be taking sort of a consensus of what we have heard. So I do want to point out that the draft bill in front of you is not etched in stone.

Mr. Bayne: Thank you very much. Page 4 of our brief deals with the area of review and perhaps I might be permitted to read that section:

In reviewing Bill 11, An Act to provide for the Licensing of Businesses by Municipalities, and noting the previous comments and recommendations by the Association of Municipal Clerks and Treasurers of Ontario, Advisory Committee of Municipal Clerks, it has been noted that all of the advisory committee's concerns have been taken into account with the exception of section 4(1)(d) and 4(2)(e) referring to "any person under the age of 18" rather than "any person younger than the age of majority," plus section 6 referring to when the bylaws are deemed repealed. I did address that slightly.

In regard to the question of age 18 in the legislation we felt that, if this were apt to be in a state of flux, a reference to the age of majority established by provincial legislation might be more proper; but then again it is not a--

Mr. Rotenberg: That is a valid point, which I think we probably could accommodate. I will not commit us to accommodating it, but it seems quite logical, and we did not think of it.

Mr. Bayne: Thank you, sir. By way of general comment, the Association of Municipal Clerks and Treasurers of Ontario strongly supports the government's efforts to rationalize the legislative framework within which municipalities are permitted to license businesses. The thrust of the bill is generally consistent with AMCTO's views. We are also very appreciative of the procedures by which municipalities and the municipal associations have been and are being given an opportunity to study and respond to the government's proposed legislation.

As I said earlier, Mr. Chairman, we have worked long and hard on this legislation with the province, and we are pleased to see it coming forward now.

It is also recognized that Bill 11, An Act to provide for the Licensing of Businesses by Municipalities, appears to be in line with a number of government policies, as it proposes to give municipalities a general power to license businesses, thereby increasing the power of the municipalities to make decisions. It is also recognized that this bill eliminates certain archaic and unnecessary sections of the Municipal Act and perhaps others as part of an ongoing process of revising municipal legislation.

Therefore, on behalf of the board of directors and our general membership we commend the government and the standing committee on administration of justice for its timely review of this important legislation, and we look forward to its implementation in January of next year.

Mr. Chairman: Thank you very much. To start out, if I might look at numbers seven and eight of your summary at the beginning: There was a fair amount of discussion this morning. If you could comment, just to get the ball rolling, I read your number seven as making something mandatory rather than permissive. Is that a correct interpretation?

Mr. Epp: Top of page 2.

Mr. Mitchell: "Be required" instead of "may"--

Mr. Chairman: Could you expand on that a little bit, please?

Mr. Bayne: Yes. I think our point was primarily the consolidation of licensing that would be within the municipal purview. Most of that, as I understand it--in fact, I guess, all of it--is permissive as opposed to mandatory.

Mr. Chairman: Fine.

Mr. Bayne: But at the present time we have licensing under the Theatres Act and many acts, and our position was that it would be extremely helpful and in the best interests of good local government to have it all in one place.

Mr. Epp: One of the issues that has come up time after time has been that of fees. As you know, there is the provision that you can charge \$10, or you can charge \$25 if there is an inspection, or you can charge whatever if you can justify some kind of administrative costs. One of the suggestions has been that municipalities might then start hiring consultants for any kind of inspections or any kind of administration as part of developing regulations or whatever they might do, and the fees might then be astronomical and be passed on to the people who are getting the licences.

Had you people anticipated or discussed anything of that nature? How do you respond to it? That came up yesterday, by the way, when the Canadian Manufacturers' Association was before the committee.

Mr. Bayne: If I might refer you to the municipal officials' position as represented by our association, in item 1 we had right from the outset felt that the fees should be strictly for the purpose of the licensing function and should never be considered as revenue raising. We do not feel that municipalities would do that. I have had a lot of experience with our local government, and that is not what we are looking for. What we are looking for is to be able to react to a citizen's concern pretty quickly if the specific legislation is not there; that is why we support the position. But we do not see fees as being a very arbitrary--

Mr. Epp: Even there, municipalities might claim that this is part of their function of having a fairly broad-brush analysis of the situation. They could justify it by getting a consultant in who costs several thousand dollars to investigate

the whole thing.

Mr. Bayne: No, we do not do that.

Mr. Epp: I am not sure whether it is widespread.

Mr. Bayne: I do not think there has been any experience that way that we could see, certainly not in my own experience.

Mr. Epp: You know, if you want to get some kind of parallel, I suppose we might look at lot levies. As you know, that is a fairly controversial situation. Some municipalities have been fairly, if I might use the word, conservative--small-c, Mr. Brandt--

Mr. Breithaupt: Not even progressive.

Mr. Brandt: --the purposes of your speech.

Mr. Epp: Some municipalities have been fairly moderate in the way they have exercised that function. They have not, as far as I know, abused it. There are others where they charge fairly astronomical fees and have been taken to court on it. Because the developers did not think the fee was justified, it has ended up in court. The ministry right now is trying to deal with that whole problem.

I have been out of municipal politics for 10 years but I regret that is one example where some municipalities have been a little too lenient in passing perceived costs on to developers, and charging what are astronomical fees. The same thing could be done with respect to these, and they could justify it by saying, "Well those are our costs and we had to hire consultants, and we had to do this, and we are going to pass it all on." I do not see that as a widespread abuse, but I see it as a potential abuse which, obviously, would not reflect very favourably on the legislation, if that were the case.

2:30 p.m.

Mr. Bayne: It is difficult for me to comment on lot levies in this context because I work for a small municipality and we think we have very reasonable fees. If there is a position that other fees are not justified, I cannot comment.

Mr. Epp: I do not want you to comment on lot levies as much as using that as an example to comment on the licensing.

Mr. Bayne: May I defer to my colleague?

Mr. Nigh: In the consideration of this matter in the clerks' advisory committee over several years, on that committee we have representation from a wide range of size of municipalities; from the very small to the very large. There is generally no perception in the committee, given the representation from various sizes of municipalities, that the municipalities were extremely anxious to run out and immediately start licensing a large number of businesses which they did not presently license.

The experience in a lot of municipalities is that they did not license nearly as many businesses as the act presently permitted them to license. There was no perception in the committee that there would be a program of embarking on a scheme of licensing which might then involve the hiring of consultants as you are suggesting in order to create this.

Mr. Epp: In order to prevent this from happening, would you be able to come forward with any recommendation of how we might incorporate in legislation something to prevent this from happening? You do not necessarily have to suggest something now, but you might work on that. We are going to have to do something.

Mr. Bayne: We would be prepared to take that under consideration. In our deliberations we have not perceived that as being a problem, but we would be prepared to consider that.

Mr. Epp: Do you anticipate that your work as clerks and treasurers and so forth will be simpler as a result of this act coming into force?

Mr. Bayne: We think that perhaps we can apply the municipal licensing process a whole lot more fairly than it has been applied in the past. In the experience of many who have worked on these matters we are very aware that the application of municipal licensing has been very inconsistent. It can do two things--it can be more consistent and it can react to the needs of the time. Speaking personally, my municipality has not wanted to licence anything where there was no real need to licence.

Mr. Epp: But you do not see your work as becoming simpler? I ask that in view of what the Minister of Municipal Affairs and Housing told the Association of Municipal Clerks and Treasurers of Ontario on July 6, "This act will make your lives simpler because as you know it will remove from the Municipal Act a large number of specific provisions for the licensing and regulating of a variety of trades and businesses." He says your lives will become simpler. I just wondered how you perceive it.

Mr. Bayne: Simpler certainly from the standpoint that the legislation will be all in one place.

Mr. MacDonald: What are you saying when you say that? Are you implying that it would be preferable if the substance of Bill 11 should be put in as amendments to the Municipal Act, along with other licensing powers?

Mr. Bayne: Our initial view was that the legislation would be incorporated as an amendment into the Municipal Act, however, we have no quarrel with it being a free-standing piece of legislation.

Mr. MacDonald: What is the feeling of the ministry on that?

Mr. Rotenberg: While we are putting it all together, we feel it should be a separate act rather than a piece of the

Municipal Act. It is not that different. If it was all in one place in the Municipal Act, that would be fine, but we feel it is preferable to have it as a licensing act. It is easier to find and easier to refer to and I think we have accommodated the request that it all be in one place.

Mr. Breithaupt: It is also more practical to put it--

Mr. MacDonald: Are you contemplating taking all the licensing powers out of the Municipal Act and--

Mr. Rotenberg: Yes. If you look at the end of this bill, sixty-odd sections of the Municipal Act will be repealed and be replaced by this act.

Mr. Breithaupt: So the effect is if somebody wants to know what can or cannot be licensed, they do not have to read the whole Municipal Act but just this one smaller pamphlet in reprinted form. It will probably be much more convenient.

Mr. Rotenberg: It is the same as the Municipal Elections Act which has been taken out and made a separate act. The Municipal Act has been this fat and if a municipal solicitor, clerk, alderman or citizen wanted to find out something, they would have to leaf through 742 pages to find out if it is or is not in the act. If you take all the licensing out and put it separately, it is easier to find. If the Municipal Elections Act is separate, that is easy to find. Over the course of our review of the Municipal Act, we may be taking sections out and putting them in separate, so it is just more convenient for everybody on all sides of the fence to find where they are.

Mr. Breithaupt: In about five years time from now, probably the idea will come, "Should these not all be in one place so we can find them?" Then we will go through it again.

Mr. Rotenberg: There is a certain circle. Let me say that the review of the Municipal Act will not take as long as the review of the company law.

Mr. Breithaupt: I bet it will go on even longer. It will not be as thorough, but it will take longer.

Mr. Breaugh: Are we going to travel to the same places?

Mr. Breithaupt: Moosonee and such places?

Mr. McLean: Under your summary of major recommendations, item 3 and it has just been briefly discussed now, I am wondering if you realized when you made the recommendation that you are saying it should be on the Municipal Act. We discussed that. The bill is to remove all licensing from the Municipal Act. I heard your reactions to that with which we probably would agree.

There are a couple of other things I would like to discuss with you with regard to Bill 11. I do not know whether you have given it much thought or not, but one item I would like to go over is with regard to arcades and amusement establishments. In your

opinion, would you feel it should be in this legislation or should it be left out?

Mr. Bayne: In my personal opinion, it should be in.

Mr. McLean: It should be included in this legislation?

Mr. Bayne: Yes.

Mr. McLean: In your review of Bill 11, in your opinion, did you find it giving the municipalities too much authority or not enough?

Mr. Bayne: Mr. McLean, I personally do not feel, and I think I can speak for our committee and our position on this matter, that it allows over-regulation. I think it is legislation that is more simplified and it is easier to enforce on a uniform basis. From a personal point of view, I do feel I have been associated with local government for a number of years and my experience has not been that the municipalities are inclined to over-regulate. At times, I do think they need a little better legislation than they have, particularly in this area. They cannot react quickly at the present time to a bad situation. They may have to wait for some amendment to the legislation. I think the power to license any business that is given in Bill 11, in the form it is in and as I say, we do not quarrel with the form, is good for the municipalities.

Mr. McLean: What position would you take on licensing industries?

Mr. Bayne: I would see no municipal position or need to license industries.

Mr. McLean: You would expect that to be spelled out in the bill?

Mr. Bayne: I would not have any position on it if it was, but municipalities do not now license industries particularly. They would have no reason to. We now have licensing of certain functions that are well regulated by other areas of authority such as by the provincial government that we should not license because it is a duplication and a waste of time. Our municipality would propose that we eliminate that.

Mr. Mitchell: Mr. Chairman, as a supplementary to that last question: When we discussed that particular section of the bill with the manufacturers' association, they felt some alarm because they felt the municipalities might feel they had the right to go in and license Procter and Gamble, General Motors or whoever. It was suggested, and I think it has been indicated, that there might be an amendment that would basically say that those manufacturers who deal directly with the public--I don't know what the precise wording might come down to, but you would not have any difficulty with that then.

Mr. Bayne: No, sir.

2:40 p.m.

Mr. Rotenberg: Let me just respond, Mr. Chairman. Mr. Mitchell says the thrust of some briefs was that we say you can license any trade, calling, business, occupation, manufacture or industry. That definition is too broad. A suggestion was made that we redefine it, not to say retail, because there are a number of things other than retail that deal with the public, but the thrust of it--I don't know what the wording would be--would be to "license any business or industry that deals directly with, sells to or serves the public or deals with consumers," that type of thing. Your brief says you want to be able to license every business. Would that kind of restriction be in line with your brief?

Mr. Bayne: Yes, I think I could speak for our committee in saying that we would have absolutely no quarrel with that kind of limitation.

Mr. Rotenberg: May I ask you then to be of some assistance to us? There seems to be some consensus, although we are not committing the government to that yet, that some time between now and the next short period of time, if you desire, you might want to suggest an alternative definition of section 1 to us. If you want to do so, it would be helpful.

Mr. Bayne: We would be very happy to assist this committee in any way we could in that regard.

Mr. Breaugh: I have a couple of things coming out of your presentation today. I must say that generally I am in agreement with the work you have done and the principles that were laid out previously by your group before the legislation was drafted.

On a couple of points that you made in here, the first one I want to talk to you about is suggesting that municipalities be authorized to issue "permits" for specific activities and that "the fee for such permits relate to both the administrative and enforcement costs, except in case of transient traders where the fee shall be a prepayment of taxes." Could you give us a little elaboration on the mechanics of that?

Mr. Bayne: Yes, I would be pleased to. At the present time, the act provides, and I believe this is going to remain, that a municipality may in certain circumstances issue what is referred to in the legislation as a transient trader's licence. That is a licence that is a prepayment of business tax. The reason it has been in place is that, as we all know, there are some businesses that will come into town quickly, set up a store, make a specific sale and walk away from the municipality and make no contribution. The transient trader's licence precluded that by saying, "There will be a fee of, say, \$300 and your business tax, until it is used up for a maximum of five years, will be charged against that." It is a prepayment system. At the time, we supported that point.

Mr. Breaugh: I have a little problem with that. How does

the municipality decide whether it is \$300, \$500, \$1,000 or \$2,000 that is due? How do you make the calculation?

Mr. Bayne: I am trying to think whether the legislation is specific on that. Is that a maximum fee in the legislation?

Mr. Brandt: It does vary. It depends on what the maximum is. The municipalities may charge a different fee.

Mr. Rotenberg: It is \$500 maximum in a town and \$300 in a township or village.

Mr. Breaugh: What I am interested in is how you calculate a fair and reasonable amount. How do you do it?

Mr. Bayne: It is difficult. I see your point. For instance, if Woolworth's comes into town, the business tax for one year would be \$5,000. In that case, a \$300 fee does not make much sense. But then Woolworth's do not often skip out and not pay the business tax. If a small organization comes in, rents a store, has a quick sale, walks away, probably leaving some unhappy customers --and we have had lots of experience with that--then at least there is a measure of protection. That is not refundable, by the way.

Mr. Breaugh: So what you are suggesting then is, if somebody wants to come in during a particular time period--toys before Christmas, chocolate bunnies before Easter--and set up shop for four or six weeks, you would make a calculation of how much business tax they might pay out properly over that period of time and charge it to them. That is the basic premise.

Mr. Bayne: The way it has worked in the past is the fee is specific and spelled out in the bylaw. It is \$300.

Mr. Rotenberg: It is the same for everybody.

Mr. Breaugh: But how is that a reasonable way to proceed? My problem is that, if everything works out just fine, you might have the ability to spot a flat rate of \$200 or \$300 and say, "If you want to set up shop, you can be here for two weeks or eight weeks, but you pay \$300." There is a little bit of unfairness there, and I suppose that is slightly discriminatory, but not substantially.

Mr. Bayne: Yes.

Mr. Breaugh: Have you not considered any other version of that same proposal? Just take the time period, for example. If a business might pay a business tax of \$3,000 a year, if it is here for a couple of months it is \$300 or \$350 or a percentage of the projected--

Mr. Bayne: To be perfectly honest, sir, we said in our position that we felt that should be out of the licensing situation and it should be dealt with separately. I agree the existing legislation in a lot of municipalities may be inadequate. But we did not address that particularly. We said we should be

dealing with licensing as a separate item and that is a prepayment of tax. It is not regulatory in that sense. Whether we would want to make some suggestions in that area after an in-depth review is another matter. I am sorry we really did not address that issue.

Mr. Breaugh: Okay. So we would still be left with the problem of one-day wonders or weekend sales outlets or things of a very short term. Nobody has even bothered to address that in a rational way, aside from picking an arbitrary sum, which is really kind of discriminatory. You don't want to set up a business and charge them \$100 or \$150.

Mr. Bayne: I think my point, sir, unless I am dead wrong, is that legislation remains. Maybe it should be looked at as well, but it is not being considered at this time.

Mr. MacDonald: Could I ask a supplementary to that? Earlier you said the fee would be a prepayment of business tax and any tax would be charged against that.

Mr. Bayne: That's right.

Mr. MacDonald: Are you, in effect, saying that if a man came in for a weekend, he would pay the \$300 and you would calculate that his business tax was \$75; so he would have a credit of \$225 the next time he came back?

Mr. Bayne: Not necessarily. If he were to walk away, we would keep the \$300. If he were to sell his business, we could transfer that to the next owner or, if he continues in business, then he does not lose any money. It is just a protection for the municipality from fly-by-nights.

Mr. Breaugh: This is not really a prepayment of tax. That is the principle it is based on, but that is not really what it is. This is really just a fee to get into business with.

Mr. Bayne: I wouldn't say that.

Mr. Breaugh: You would say it is a prepayment of tax?

Mr. MacDonald: It is safer to say it that way.

Mr. Breaugh: On that same page of recommendations, when you were making comments to the Municipal Liaison Committee, you supported the proposal by the city of Mississauga offering discretionary powers so that people who frequent or use adult entertainment and body-rub parlours should be age of majority or 18 years of age or whatever the age group was. You also said that should go on to other things too, pinball parlours and things like that. It is an interesting approach. They could run pinball parlours; the only thing is nobody who wants to use a pinball parlour would be allowed in. Is that the general drift of the idea?

Mr. Bayne: That is the effect.

Mr. Breaugh: You supported that?

Mr. Bayne: Yes. At the time the whole question of pinball machine operations, and more recently the video game machines and so on, had caused a lot of problems for the municipalities. Given that this was a little while ago, I think the position we might ourselves be in now, since we have had a little more experience, is that our problem has been school-age children in there during school time. We have had representations and deputations from high school principals who had a great problem with this. Perhaps we have thrown that in, but I think we see that in a slightly different context in 1982.

Mr. Breaugh: So you would soften your position somewhat.

I was interested to read in the Kingston Whig-Standard over lunch that the city of Kingston has jumped on the bandwagon. It thought it would be very trendy and it, too, ought to regulate video games, held a public hearing and nobody showed up. Maybe that addresses the issue the way it ought to be addressed. It is hard to have a revolution without any troops.

2:50 p.m.

On the next page, you went on to address yourself to a problem we have come across. It may simply be a drafting problem in the way the act is put together. You recognize that a municipality is not really in much of a position to judge people who have a certificate of apprenticeship or a certificate of qualification under the Apprenticeship and Tradesmen's Qualification Act.

The act itself, as it is now drafted, is not very clear on that. Are you standing by the initial recommendation on this one, that this is an area where a municipality really should not have its finger in there?

Mr. Bayne: I think our view, if I can recall the discussions at the time, was that we felt over-regulation was the last thing we wanted to see. If a calling, if you like, is regulated and legislated by Ontario and a fellow has a ticket to be a journeyman plumber, that should be good enough for us. I do not think we really need to go through the process in a parallel sense. That was the position we took at the time. If the current legislation is iffy on that, we can say we still support that view, that we should not be double-licensing.

Mr. Breaugh: In my experience, a number of the councils have attempted to deal with the problem that they often approve large projects on the basis that building a new shopping centre is going to give us a lot of jobs. Then, when the shopping centre is put up, it turns out that nobody from that area gets a job because the contractor comes from somewhere else and he wants to bring his own tradespeople in with him, or there is a big master trade agreement or something like that.

The net result is that a council approves a project, in large measure sometimes, because it thinks it is going to generate some jobs especially in the construction industry. When it actually gets off the ground, it finds out, "We thought we were

going to get 600 jobs out of the project and it turns out we got two."

It strikes me that one really nifty way to nail that down would be to have municipal licensing of all these tradesmen. I do not think that is very desirable but, if the current act does not change, it seems to me it would be a fairly natural tendency on the part of a municipal council to try, in the first place, to approve large-scale projects for employment purposes, and second, make sure that local people get those jobs by issuing some kind of local ticket. I would be a little reluctant to let them go along with that.

Mr. MacDonald: It sounds like Peckford.

Mr. Breaugh: Well, it has been done in more than one jurisdiction in Canada.

Mr. Rotenberg: You cannot do that now.

Mr. Bayne: Our experience has been that is very discriminatory and it often, if it is tested in the courts, will not hold.

Mr. Breaugh: It often is the case now in other smaller matters such as transportation of goods and things like that. There are lots of arguments about who has a licence to transport certain kinds of goods from one municipality to another or within the municipality. There is often a lot of discrimination involved in that.

Mr. Bayne: There is that problem in the legislation that exists now, and the possibility of abuse has been there for a long time. I do not think this changes.

Mr. Breaugh: You would stand by your original recommendation and ask probably that some clarification of the current drafting of this Bill 11 reiterate that.

Mr. Bayne: In that area?

Mr. Breaugh: In that area.

Mr. Bayne: If that was deemed to be necessary, yes. Our position is consistent on that.

Mr. Breaugh: Could I leap into a couple of other areas on this same licensing of particular kinds of activities? One of the problems a number of municipalities have is that, for example, Ontario will provide licences to certain buses to travel on city streets.

I guess the most common problem is that somebody will have a licence to transport school children. Somebody else will be able to transport normal passengers on a highway. You get funny little situations where the kids from a particular school want to charter a bus. In order to charter the bus they want, they have to drive 10 miles to get outside the municipality's jurisdiction. Do you

have any desire to attempt to rectify that one in any of this licensing provision?

Mr. Bayne: No, we did not address that. We have addressed it on the basis that we felt that where regional municipalities had the problem of the boundaries and certain legislation that affects carriers and so on that should be in place, we feel the municipality has the right to handle its transit situation either on contract or by franchise or however it wishes to proceed in that area, and that the question of the transportation of the public is a large question and probably is adequately handled, at least in my personal view, by the authorities that handle it now. I would not think we would have to see the municipalities involved.

Mr. Breaugh: You want to leave that one alone.

Mr. Bayne: Yes.

Mr. Breaugh: One final question. Most of us agree with the principles in the bill. Our arguments are about the mechanics and the wording of the legislation itself. You have been nailed, whether you like it or not, as the prime authors of the legislation. Now I would like to ask you, are you the prime authors of this and, if you are not, are you reasonably well satisfied?

A number of us have pointed out what we think are essentially drafting errors or areas where the wording needs to be clarified to match the intent. Are you reasonably satisfied that the bill in its current state reflects what you were trying to do in your records?

Mr. Bayne: Yes, I think in the broad brush we are satisfied with the legislation. We think it is certainly a major step forward in improving the legislation we have had to work with. I suppose we would never agree on all the nitty-gritty. We think a lot of that may have to be lived with a little and, if a problem is created, to address that then. We have talked about some of those issues today that perhaps need to be looked at in a little more depth. I think I can fairly say and we have indicated in our brief that, yes, we support the legislation.

Mr. Breaugh: It appears to me in the current bill, there are a lot of headaches in there. As well as solving some problems, there will be some new problems created by this piece of legislation. Some of our municipalities will probably handle them with ease. For many of our smaller, rural municipalities, if they choose to adopt these provisions, I would anticipate some problems. Would you share that view? Is there anybody here from a smaller--I guess you are the smallest.

Mr. Bayne: I am the smallest.

Mr. Breaugh: Orillia is not a small town. It is a huge metropolis.

Mr. Rotenberg: Scarborough is pretty small.

Mr. Bayne: Scarborough is small and the city of Toronto is tiny.

Mr. Nigh: Could I speak to that briefly? As I say, in our clerks' advisory committee, we had municipalities down to 3,000 in size. I think it is their perception that, if they are going to take advantage, if one wants to use that term, of any of the provisions in the new legislation, in doing so they will have to be aware of any problems they are acquiring along with it. They do not have to license anything they do not want to.

In any new legislation, you are going to have some new problems, but in the existing legislation there are problems there will not be in the new legislation. I do not think the new problems will be any worse than the old ones. In fact, I would say I do not think they will be as bad.

Mr. MacDonald: Could I get a refinement on your observation that you do not think the regulatory powers should be used for revenue-raising capacities?

We have had two different kinds of submissions as to how you calculate the fee, one that it be merely the cost for the clerical handling of granting the permit or whatever, and another that you should take into account there may be costs for policing and for inspection, and that, if they are not covered by the fee, they will have to be picked up by the general taxpayer.

Where do you draw the line on that? Do you envisage it as the fee being just to cover the cost of issuing the licence?

Mr. Bayne: Yes. Our initial submission was that we felt the licensing should be regulatory and not revenue-producing. We did suggest that where there was a need to cover costs of its policing, the policing should be the responsibility of the taxpayers at large because it is by and large for the protection of taxpayers that we propose to have the regulation.

If there are specific areas--and I think we talked in terms of a permit as opposed to a licence. In the case of a building permit where we must send a man out to assist in the design, to interpret the code, to check the work or something like that, that is a cost that should be related in the fee of the permit. That is the distinction we see and saw at that time, that those are two separate things.

We did not intend that a municipality should be able to license every business in town simply to generate another \$10,000 or \$15,000 of revenue or however many thousands it might be.

3 p.m.

Mr. MacDonald: I do not know if you are aware of the testimony that we had from the board of trade and the manufacturers' association, but they had two areas of real major concern. One was that we were granting powers that were so great that it opened the door; and while members of the committee tended

to think they were over-reacting and viewing a bogey that would not arise, they still felt that this was a concern. Related to it is the competence, particularly of smaller municipalities, to handle that kind of licensing or assessing of the legitimacy via licensing.

What is your reaction to that, to borrow Mike's phraseology, as one of the prime authors of all this? What is your reaction to that fear?

Mr. Bayne: Well, being involved in local government, I have never perceived, and I am sure my colleagues would agree, that municipal councils, if you like, who are also elected representatives, are running off and doing that kind of thing. They must continue to be elected. I think they are responsible; I think they respond to the needs of the community very well. I think that if they were doing that, they would be brought up short by the electorate at the appropriate time.

I do not see it as being a major concern, really, that they are going to be out just licensing everybody.

Mr. MacDonald: My observation of municipal councils is that they are as sensitive to the business element in the community as anyone else.

Mr. Bayne: Probably more so.

Mr. MacDonald: Well, I would not have said it that way; you said it.

There is one final point I meant to ask this morning, and I had to leave before I had a chance to put it to them. I am a bit puzzled as to why school boards, which are one of the major groups concerned about the licensing of video machines and that they should be kept at a distance from schools--and the two figures that we had used this morning were 250 metres, and they cited one instance where it was 300 metres. Now, from my observation of young people today and their capacity for mobility, even if it is only their feet, let alone bicycles and cars, I do not see how the problem is solved by distancing the video machine by one block. I am puzzled by that. Can you resolve my puzzlement?

Mr. Bayne: My personal experience only is that we have in our municipality some of these emporiums, if you like, that are adjacent to schools, and they are a problem for teachers.

Mr. MacDonald: What do you mean by adjacent?

Mr. Bayne: Right across the road from a high school, say.

Mr. MacDonald: But is the problem going to be even reduced, let alone resolved, if it is moved 300 metres away?

Mr. Bayne: In the opinion of those school teachers and principals who addressed the problem with us, it is a problem because kids are out between classes, going over and popping quarters into these things, and they are staying away from class;

the thought was that if they are not right next door, maybe it would be less easy for them to get there. I agree with you that they do get around fairly quickly.

Mr. MacDonald: If they are going to play truant, they are not going to be dissuaded from truancy by having to go a block away.

Mr. McLean: Mr. Chairman, just a supplementary to Mr. MacDonald's: I think that case probably happened in Orillia, where it was right across the street from the school, Park Street.

Mr. Bayne: Well, it was (inaudible) who complained--

Mr. McLean: Right. And talking to the person who owned that arcade, or who had his machines in there, and from his talking to the principals, he realized the problem that they would pop across if they put a quarter in or whatever, and the game was 15 minutes long; they would wait until that game was over before they would go back. When he found out the problem, he moved away from that area, and now they have to either drive or have a longer period of time to go to that amusement centre. So there has been a lot less problem, and the distance, from the information I got, did make a difference.

Mr. MacDonald: I am not arguing the point if it is right across from the school. All I am saying is that I repeat my puzzlement that the problem is solved if you move it no more than a block away.

Mr. Bayne: I think we perceived our problem to be more of whether it was reasonable to suggest that, during certain hours when children should be at school, they not be allowed in there. However, the argument on the other side was that the truancy system should not allow it to happen anyway. It was a bit of a standoff.

Mr. MacDonald: Mike Breaugh is in favour of it, because then the truant officer knows where to get all the kids.

Mr. Breaugh: It cuts down on the mileage charges.

Mr. Bayne: That is certainly true.

Mr. Breithaupt: There are two themes I wanted to develop from some of the things that have been said. One is again the comment by the Canadian Manufacturer's Association and the Board of Trade of Metropolitan Toronto that the giving of this general licensing power is far too generous and might lead to abuse. We see from this bill that 60 or so present particular areas are going to be taken out of the Municipal Act. I am wondering, to take as an example, Mr. Bayne, whether you can tell us for how many of those 60 areas Orillia has bothered to particularly seek licensing.

It is my understanding, even from Mr. Rotenberg's comment, that even in Metro Toronto--and I would like to hear about the city of Toronto's situation too, or Scarborough's--with the larger

populations and perhaps a greater variety of activity, even the largest communities do not have every category that they could have now. What is the situation like in the municipalities each of you represents?

Mr. Bayne: Speaking for Orillia, that is true. We do not now license all the areas of concern that could be licensed under the act.

Mr. Breithaupt: Approximately how many of the 60 would you be involved with in Orillia?

Mr. Bayne: Without thinking seriously about it, I would say probably one third. The concern is, though, that in cases where it comes to our attention--and this is personal experience again--there has been a need to license. For instance, the chimney people, the siding people, the driveway people who breeze in and breeze out--at times it was not possible to licence those without going through a long process and the damage was done if there was damage to be done. The consumers, the taxpayers, the local people would come to us and say, "Why don't you do something about this?" Perhaps we could not or by the time we could it was too late.

Mr. Mitchell: What you are saying is that this is an immediate reaction piece of legislation, where the others involved the OMB possibility?

Mr. Bayne: Sometimes the OMB or sometimes the legislation was not there at all and you had to consider either getting a private act or approaching the province about some general legislation that would cover a situation. By the time you got it all sorted out, either the damage was done or the problem was gone.

Mr. Mitchell: With Mr. Breithaupt's indulgence, just to follow up on that: The fact that you may have used only a third of what you currently have the authority to do perhaps indicates more that the concerns that have been expressed by other people would be unfounded.

Mr. Breithaupt: That was the theme I thought would probably emerge once we had heard what the other three municipalities, for example, did by proportion of the total 60 that they could do.

Mr. Woadden: I do not know what the city of Toronto's proportion is in specific figures but--

Mr. Breithaupt: Just an educated guess.

Mr. Woadden: I have found in my experience that educated guesses get you into trouble. I do not particularly like to get--

Mr. Breaugh: Hey, listen, we are the politicians.

Mr. Rotenberg: In Metropolitan Toronto, the vast majority is done by the Metropolitan Toronto Licensing Commission and, therefore, the borough of Scarborough is excluded by Metro

legislation from most of those 60 items because they are done by Metro licensing and, when Metro does it, every municipality cannot. It would not be a good example. When Metro licensing comes in, you can ask them. They license almost anything that moves.

Mr. Breaugh: So no Tories are licensed.

Mr. Nigh: If I could just comment on that briefly, what you said is correct. We are excluded by legislation from passing any bylaws that will enter a field where Metro licensing bylaws at present exist. However, we do have the right to pass bylaws in fields Metro licensing bylaws do not enter.

We had two bylaws in that category: one to license dogs and the other to license laundries. We have recently repealed the one to license laundries and we are at present only licensing dogs.

Mr. Rotenberg: Which is not under this act.

3:10 p.m.

Mr. Woadden: I think Mr. Nigh's comments earlier were basically very effective. We do not go out seeking areas to license. We just do not do that.

Mr. Breithaupt: The other theme I was wondering about was, following the presentation made by the city of Kitchener this morning concerning the hawkers and pedlars, the taking over of a hotel room for a truckload sale of fur coats or whatever and the dismay that causes other shopkeepers in the community.

Their suggestion was that the opportunity to have a licensing charge of up to \$1,000 would give some chance to balance the consumers' benefit of having this kind of event with the local merchants' view that this was an unfair practice and that a \$25 licence was almost an affront.

Do you have any position or even an individual view as to the usefulness of having that \$1,000 figure as a maximum in order that a municipality can attempt to set this balance that was suggested to us is needed?

Mr. Bayne: From a personal viewpoint, the problem perhaps is not as severe in Orillia as it might be in Kitchener. Certainly we recognize the problem. It is a serious problem at times. However, if we are going to mean what we say from the standpoint of the licensing process and the intent to regulate it and make sure in the process that we are protecting our citizens from the process as opposed to trying to recover some unfair competition situation, I would have to say we would have to stand pat and say the fee should not be.

If we have a problem, and I am sure we do, where this kind of business can come in, and if a transient trader's licence is not appropriate or cannot be had because of the technicalities of the law, then perhaps we need to look at that as a separate item.

Mr. Breithaupt: Their situation, as explained and

acknowledged by Mr. Rotenberg as the parliamentary assistant, was that zoning could deal with this in some circumstances but, if one municipality had a zoning concern and the one next door did not, that was being effectively avoided.

The other side then became that if this licensing cost were in the regulatory situation as opposed to a prohibitory situation, perhaps the exception should be built into the licence situation that would allow the municipality to deal with it on the occasion when it might arise, acknowledging of course that in the vast majority of cases the lower \$25 fee would be the kind of thing being charged. So it would be a licensing aspect with this built-in opportunity if it was needed by a council which could then act immediately as opposed to the zoning circumstance or the community next door not doing anything and thereby dealing in their view unfairly with their own merchants.

While you might like to see it as a separate item as opposed to the either-or, their view was that if it was built in to the one, it would give that flexibility they thought on occasion would be very useful.

Mr. Bayne: I certainly would not quarrel with the position of Kitchener. I do not know exactly the point they were trying to make, but if they are trying to tax the business then what we have said, and I think we have to be consistent, is that we do not think it should be in a licence. If there has to be another way, we have to look at that.

Mr. Breithaupt: Can you think of another way, offhand, that others have considered or that has been brought to the association as a way to resolve this concern?

Mr. Bayne: It depends on the arguments you listen to. There are many who argue, first of all, that the business that accepts, or the hotel that rents the room and the parking lot for X fees, should pay a business tax. They think they should be entitled to do that. Someone else will say the whole idea of the provincial transfer of grants is to eliminate the need to be concerned about the municipal boundaries. If one hotel is over in that municipality and another in this one, and if they cannot go here they will go there, that is your point exactly. I don't think it is addressed in licensing legislation. I wouldn't want to say how to do it without really seriously looking at it.

Mr. Rotenberg: May I ask a supplementary with your permission, Mr. Breithaupt? In regard to the hawkers and pedlars who want to come in for one day in a hotel room or come in for one or two days for a flea market in the corridors or the parking lot of a shopping centre, if the definition of the transient trader were broadened a little bit to cover them as well and, therefore, you could catch them under transient traders, how would you react to that from a philosophical point of view and an administrative point of view, Mr. Bayne?

Mr. Bayne: That is certainly the way I think it would be better handled.

Mr. Breithaupt: Then you would set the transient trader range of licence fees much higher than the ordinary routine kinds of events that otherwise this bill would deal with. Is that right?

Mr. Rotenberg: First of all, transient traders are being left in the Municipal Act. They are not part of Bill 11 and, therefore, at the moment transient traders are being left as they are with the \$300 and \$500 fees.

We have been talking about this as a result of what has happened this morning, and without having made a decision yet, one route that seems to be quite possible, as I have indicated, is to broaden slightly the definition of transient traders to catch Mr. Brandt's overcoat salesman and the leather coat salesman in the hotel room and the art salesman in the flea market type of thing. That could be done and we, in effect, would be taking those people, as well as hawkers and pedlars, out of the philosophy of the licensing Bill 11 and putting them into the philosophy of transient traders.

That is something we want to consider. Some time, at the end of these hearings, I would like some tentative input from members of the committee on how they feel about that.

Mr. Breithaupt: Maybe you could do that and as well consider whether the dollar range should be--

Mr. Rotenberg: That would not be done under Bill 11. That would be done under a future amendment to the Municipal Act.

Mr. Breithaupt: Perhaps when we come back to the clause-by-clause, if you decide to go that route, that could be stated then.

Mr. Rotenberg: I would like to have a wrapup some time next Thursday, before we go back to our cocoon and decide things. Again, I would like some feedback from the committee as to how you feel about that.

Mr. Eakins: Can I just ask how the act defines transient traders?

Mr. Rotenberg: "Transient trader" includes any person commencing business who has not resided continuously in the municipality for at least three months next preceding the time of his commencing such business there." That is someone who is not entered on the assessment roll.

Mr. Eakins: That is pretty broad. Anyone could be a transient trader.

Mr. Rotenberg: Well, someone who is not a resident. It is pretty broad: anyone "who offers goods, wares or merchandise for sale by auction, conducted by themselves or by a licensed auctioneer or otherwise, or who offers them for sale in any other manner." So someone who is offering goods for sale is a transient trader.

Mr. Epp: Could you not be a transient trader in your own municipality if you live there but still do not have a permanent business?

Mr. Rotenberg: No. According to this definition it is someone who does not reside in the municipality "for at least three months next preceding." If you live in the municipality and set up a flea market, you are not a transient trader.

Mr. Epp: I am just talking about something for a day or two.

Mr. Rotenberg: If you don't live in a municipality, if you come in and rent the hotel for one day to sell leather coats, the definition of transient trader may be extended to cover that. It has not been done in the past, but it possibly could be. From that point of view, we might rewrite some of those definitions or make some recommendations on that.

Mr. Epp: Could I ask a supplementary too? Why would you not seriously consider putting transient traders into this act, because it seems a logical extension?

Mr. Rotenberg: The reason we did not put them in the act is that transient traders, as the delegation said, are charged a fee in lieu of business tax. We are not charging a licence fee. The amount we are charging them is a revenue-producing thing to even up the competition with the man next door who pays business tax. It is a little different from a licence. It is to get the guy to raise some revenue because he is in business, not to license for a regulatory or control provision.

I do not say they could not go in. Maybe we could have a section in the act which is different, but it is a little different than the philosophy of licensing and that is why we left transient traders in the Municipal Act at this point. It does not preclude the fact that we might put them into Bill 11.

3:20 p.m.

Mr. Mitchell: You are not closing the door to the possibility?

Mr. Rotenberg: We are not closing the door to the possibility. It just seems it is a little different, and it sets a precedent in the licensing act for using it to raise money rather than for regulatory purposes.

Mr. Breithaupt: They may have to put all these things back in one statute.

Mr. Brandt: How quickly they forget. I just wanted to make a comment--

Mr. Breaugh: That's because you are not wearing a tie.

Mr. Brandt: Some people don't wear ties to these hearings.

The only point I wanted to make was that, earlier on in the hearings, there appeared to be some question on the part of the parliamentary assistant about the impact on municipalities and the importance of this whole question of transient traders, itinerant salesmen and so forth. As I recall your words, you had not received a large number of complaints about it and, therefore, it was not a major issue, which I can appreciate if you are looking at it perhaps from the perspective of the ministry. But I think from what you have heard from the members of the committee and the delegations, it is a very major problem and concern.

I think Mr. Epp's comment about considering whether they should be included in the bill as part and parcel of the total package should be looked at very seriously. I think the idea merits some consideration, and I just wanted to reinforce my colleague's very lucid points and arguments. As usual, he is just about right.

Mr. Rotenberg: Mr. Brandt, we have no major philosophical bar to doing that sort of thing. It is just a question of the best way to handle it.

Mr. Stevenson: I want to make a few comments and ask a question relating to the licensing of tradesmen. I have not been involved in municipal politics, and I view this strictly as a consumer. When a tradesperson starts up a business in a rural municipality, it does not take very long for the word to get out whether he is good or bad. It travels quickly and at some distance; so I don't really have a concern there. But having lived in a city for a number of years and moved into a relatively new house in a relatively new subdivision, I had some difficulty determining who were some of the better people to come and work on the various problems in a house.

I wonder whether the licensing of these people might not provide a worthwhile service and improve the information flow to the public. I see a situation where a new person, if he had the licence from the province or the governing body, whatever it happened to be, almost automatically would have to be given him a licence at the municipal level unless he had some very bad record from some neighbouring community. If that person worked there for a few years, the fact that he had a municipal licence might tend to bring additional information to the attention of the municipal office, possibly bringing in information that your building inspectors might not pick up over the years, and that sort of focal point could be useful to the public.

In a larger municipality the news does not get around as easily as it does in rural areas, and if somebody was a very poor workman, that information could be useful. Certainly if they were bad enough, after a number of years the municipality might wish to withdraw that licence or bring to the attention of some other governing body the lack of qualifications or the poor workmanship of that person.

Could you comment on that and on the relevance of the licensing by the municipality as an additional source of

information for the public in any particular area?

Mr. Bayne: It would be my view that if a person receives a municipal licence, then there is some credibility attached to that licence. I think if the municipality is going to issue that licence, it should do just as you say: it should know with whom it is dealing.

This is not always possible. In a small municipality, perhaps, it is more difficult, because you may not have the depth to be able to examine the person in detail. By the same token, without wanting to overregulate, if it is not a problem you may not want to be concerned with it, because I think if you are going to do it responsibly, you must be prepared to do that.

We must also recognize that if the municipality chooses not to issue a licence, the person is entitled to a hearing. Certainly in the past, and certainly in the new legislation under the Statutory Powers Procedure Act, municipalities are required to sit, hear and make judgement, and it can become very complicated.

Unless the municipality is prepared to assume all of that--and I think they will if a problem is identified--to do it holus-bolus creates a whole new mechanism of the bureaucracy that I do not think, by and large, municipalities really want.

Mr. MacDonald: Can I ask a supplementary there? How would a municipality acquire the competence to do that? As I understand the purpose of the bill, quite frankly, my initial reaction is one of interest, if not favour. There are school teachers who have a licence to teach and who should have been turfed out a long time ago; there are doctors who are practising who should have their licences withdrawn. There is no review of it. A person can get a licence to be an electrician or a plumber and not practise his trade for 20 years, and then for some reason come back in when he is really not competent.

Mr. Rotenberg: Some politicians recognize it and resign their seats.

Mr. Breaugh: Okay. Some do not and stay on.

Mr. Rotenberg: Touché.

Mr. Mitchell: You left yourself open, David.

Mr. Rotenberg: I have not been here long enough for that to apply.

Mr. MacDonald: Let me come back to it. How would a big or small municipality do that? A big one presumably would have the greater capacity to develop the competence to second-guess the original licensing and the competence of that tradesman; a smaller municipality would have extreme difficulties.

Earlier you expressed general approval of this bill. Here is one aspect of it. What is your response to how you cope with that?

Mr. Bayne: I think, for instance, if we use the example of licensing a journeyman plumber, we have a mechanism, and most municipalities do, whereby there is a pre-established testing, which has been developed by the province, and we use it in our municipality. However, if the man also has his credentials from the province, it is a duplication. There are areas where we can do it, but, of course, there are areas where we cannot.

Mr. MacDonald: But the testing may be valid because, for example, if I were tested on a mathematical examination or a physics examination I took in high school and passed with an A mark, I am damned certain I would fail now.

Mr. Mitchell: No bragging.

Mr. MacDonald: Seriously, now. And I think that is in varying degrees the case out there not only with tradesmen but also with professionals.

Mr. Bayne: I suppose it applies in anything. I know people who have a current, valid driver's licence who have not driven in 30 years. I suppose if they got into a car to drive, it would be a problem. But they have it, and I do not know how you do anything about that.

Mr. MacDonald: But your answer was that you use the test that originally was used.

Mr. Bayne: What we are saying is that we sometimes duplicate the test; that if we do not need to license journeyman plumbers because their credentials are examined by others more competent, then it is a duplication and we should not do it.

If, on the other hand, we think a business is a bit fly-by-night, then we should examine it, we should go through the mill and we should respond to the needs of our citizens. We think the legislation will allow that to happen.

Mr. MacQuarrie: Mr. Chairman, it relates, I think, to this question of transient traders and where and how a municipality can act.

Mr. Mitchell: Be sure your question was not asked before you came in, Bob.

Mr. MacQuarrie: Some of the common consumer complaints that come from municipal councils concern, for instance, new subdivisions, where a guy installing asphalt driveways comes around and does the whole neighbourhood in the sweep of a week or so, and then the next spring they end up all falling to pieces. It affects people currently involved in running around with some caulking operations. Caulking houses provide not only goods but also services.

3:30 p.m.

There was an aluminum siding game a few years ago with people coming around with aluminum siding going through a

neighbourhood selling a lot of installations and doing some very limited control that could be exercised over that sort of operation. They were not one of the accepted trades that were licensed provincially. How do you protect your consuming ratepayer from the operations of this sort of outfit or individual?

Mr. Rotenberg: Are you asking me or the delegation?

Mr. MacQuarrie: I am asking you.

Mr. Rotenberg: Under the new legislation, the municipality can require licences for all these businesses, such as driveway contractors, aluminum siding people and so on. They can require insurance, which would be products liability insurance, and I think they can acquire, as a condition of licensing--I believe it is still in the act--proof of financial responsibility and registration, so that if they come from another municipality, you know where to find them sometime later.

They can provide that the person from in town or out of town has to give some kind of permit location so that if next spring the drivers are not there, you know where to find them. The municipality would want to know at least where the fellow is to be found and that he has financial responsibility.

It would seem to me that this fellow can't examine that person on the basis of whether he is financially competent not only to do the job but also to fulfil whatever guarantee he is offering. Within the guidelines, the municipality can set the regulations and they can get at all those people now. Some of them they couldn't get at before.

Mr. MacQuarrie: I realized that the new bill would provide some sort of coverage, but I was wondering particularly in terms of product liability insurance where the success of an installation depends as much on the knowledge of the installer as the quality of the product being installed.

Mr. Rotenberg: Again, the municipality could require that the contractor or businessman demonstrate his competence to install a driveway, aluminum siding or whatever. There may not be a provincial trade examination for those. It may be somewhat difficult for municipalities to set up an examination for a driveway contractor, but they have the power to so do. Some people now license driveway contractors, and I assume there is some qualification they must demonstrate.

Mr. Bayne: I think what the municipality would be looking at, sir, would be to have the power to license so that they could examine his credentials, even if it is to examine them somewhere else. "Where have you worked? What have you done?" We can go to them and say, "How did this man perform?" and if he hasn't performed well, we can say "No," and if he wants a hearing, we can tell him why. Then we can also say to our people, "Make sure your guy has a licence," and, "We have looked at it and he has some credibility." Hopefully, that will work. It is one of the reasons we promoted this legislation in the first place.

Mr. MacQuarrie: I was wondering also about guarantees in insurance. I realize that one can check and cross-check and get some indication of an individual's credibility, but I was wondering whether there were some way, not only in terms of product liability insurance but also in terms of financial guarantee that might be posted.

Mr. Brandt: Some concern has been expressed about the potential for harassment during the inspection phases of the licensing where a municipality, if it had a licensing officer or an employee who was charged with that responsibility, could without any impediment whatever go back on a frequent basis to continually look over a business, to check credentials and qualifications and that kind of thing. I think it is probably a red herring in the sense that it is unlikely to happen, knowing the manpower situations in most municipalities.

But if you are looking at it as a businessman, from the other side of the fence, there is nothing in the bill that regulates the number of times which you might be able to go back, any more than I suppose a provincial staff member who is working under Occupational Health and Safety or Workmen's Compensation or whatever. It is just the limitation on manpower and time that regulates that more than anything else.

Can you think of anything that might be realistic or reasonable in terms of control that might ease that concern without destroying the intent of the inspection process? Certainly I do not think the intent of the bill is to have a municipality go in on a frequent basis harassing, if I can use that word, a particular individual or company.

It seems to be a concern that has to be addressed in some way. You probably have not given it any thought, but I can understand somebody coming from the other side having concerns about it.

Mr. Bayne: I think we talked about the responsibility of our elected officials in local government and the people they employ. Hopefully, harassment would not be part of that and I am sure would not be condoned in any of the municipalities I am familiar with.

If it were to happen, it probably would be more a personality situation, and these things do occur, but I do not entirely know how you legislate common sense. I think we have to leave a bit of common sense with our legislators and our legislation. I really could not comment beyond that.

Mr. Brandt: Building inspectors from time to time are accused of that very thing, as you well know.

Another concern that has been raised which I would like your reflections on relates to the problem of potential political intervention in the granting of a licence where a council is lobbied or individuals on the council are lobbied not to allow a particular business to establish itself, because of the pressure that might be forthcoming from a well-known or influential local businessman.

From an administrative standpoint, and recognizing that you are somewhat outside the direct political arena--although I think you probably take exception to that from time to time--how would you handle that kind of a problem if you saw it develop, because it is possible that it could develop?

Mr. Bayne: I suppose in any political process there are areas of influence. However, I think there is a great deal of protection built into this legislation in that if a council proposes to refuse a licence, if one is asked for, there is a hearing process. It would be difficult to support the refusal on the basis of someone saying they ought not to have it because of the competition. There would have to be some real reason for it. I think the protection is already in the legislation in that area.

Mr. Brandt: The bill specifically indicates it does not allow for a monopolistic situation. I can appreciate that. But I can see on occasion where some people feel there is a proliferation of businesses, and where further competition may erode the entire market as it relates to that particular segment of the market, that undue political pressure can on some occasions perhaps cause a council to look negatively upon an application for a particular licence.

Mr. Bayne: As I said, that is certainly a possibility, but I think the protection in the legislation is they might have to have that decision examined in a public hearing. I think then they are less inclined to do that. I think the legislation is good in that regard.

Mr. Eakins: I have a couple of quick questions. I notice in the summary of recommendations you say the municipal licensing powers should be used for regulatory rather than revenue-raising purposes. What real benefits do you see in the licensing? Do you have a monitoring process of, say, zoning to make sure certain businesses locate in the right areas? Is that part of the reasons for licensing?

Mr. Bayne: No, not really. I think the control of the location is a zoning principle. If it is a retail business, it must be in a retail area. I think what we are saying here is that if a business needs to be regulated at all, it should be licensed for that purpose and not merely licensed for the sake of raising additional revenue for the municipality.

Mr. Eakins: I agree. In other words, to know how many you have within a municipality and where they are.

Mr. Bayne: That is right. Or if they are a problem and need to be regulated, then they are, in fact, regulated. If they should renew a licence every year because there is an inspection process that goes hand in hand with that restaurant, and it should have the health unit look at it or something like that, then there is a specific regulatory reason and not merely to raise money. That is the position of our association.

3:40 p.m.

Mr. Eakins: I am not a regular member of the committee. I just ask out of interest, but I notice the Association of Municipalities of Ontario will be appearing before the committee. Are you pretty well agreed as far as this bill is concerned as a total municipal organization or are your concerns different from AMO's?

I suppose that is hard to answer. I have sat on a couple of committees where the municipal associations were at odds in their presentations, like on Bill 127, An Act to Revise the Pits and Quarries Control Act, for instance. I am wondering if there is a united feeling among the municipal people generally in regard to this bill?

Mr. Bayne: Certainly up to this point I think I can fairly say we are thinking along the same lines. There may be grey areas that require a little tuning up, but I think by and large it is fair to say we have the same view as AMO.

Mr. Eakins: That is fine. That is all I have.

Mr. Rotenberg: I have some elaboration to make on a couple of points. We talked about the matter of examination and competency and we used the point of view of the plumbers. The way the bill is written, if a plumber has a certificate from the province there is no necessity for the municipality to examine him, but the certificate from the province, from Colleges and Universities, is like a degree. It is the end of an educational process and there is no continuing monitoring.

The question that has come up is if, as a result of complaints or something else 10 or 15 years down the road, you find this plumber or a suspicion that this plumber is no longer competent, do you feel it is proper for the municipality to call him in and say, "We want you to take this other examination," or some other examination of his competency. Do you think you should be doing that?

Mr. Bayne: I think we view that as the area of difference between the licensing and the permit. I think we would continue to support the permit, the examining of the work of a plumber and if it relates to the code. If our building inspector finds the man is not up to date, I think he has a responsibility to do something about that, but the licensing process at the moment is really no different than yours in that, once he has it, he has it. The monitoring is in another field and that is the permit.

Mr. Rotenberg: Yes, but one of the purposes of a plumber or half-plumber, and I use those just as an example, having municipal licenses is some indication to the residents of a municipality if the man is competent.

When you get from your building inspector or others an indication that the man is no longer competent, do you feel you should be able to have a show cause hearing why his licence should be cancelled, have him re-examined, some way of pulling that licence or threatening to pull the licence because his competency

is no longer there? His having your ticket, your licence, which is a guarantee or an indication of your blessing maybe should not be there any more. How do you feel about that?

Mr. Bayne: We certainly as a municipality feel that concern.

Mr. Rotenberg: Do you feel you should be able to pull the licence or re-examine him because you cannot send him back to the province? It does not do that sort of thing at the moment.

Mr. Bayne: I think what we are saying is that, if this legislation goes through, we would not licence him and perhaps that is a problem that should be addressed.

Mr. Rotenberg: Would you use the section which gives you the right to continue to examine his competency? Would you think you would want that section and use that section for the person who seems to be falling from grace?

Mr. Bayne: I think it is fair to say, yes, we might need that.

Mr. Breaugh: How about a builder? Everybody here I am sure has a builder or a developer or whatever name he is going under right now who has put up a subdivision. There are almost inevitably arguments between the people who bought in that subdivision. I bet every one of us can name in our own area a builder who put up a subdivision and the houses are not well done, in fact, incompetently done.

The builder admits it is not right but he says, "I am not going to do anything about it." Is it your view this would then give to a municipality the right to pull his ticket, so to speak, to build in that community if it is clear a builder came before, say, a planning committee and residents are there as they usually are screaming and yelling that this guy promised houses and the houses are not there yet, or the guy promised to provide houses along those lines and it never did happen or the roof leaks or whatever the problem is?

He says: "Yes, but I do not have a legal requirement to do that and I am not going to do it. If you do not like it, you can sue me and go to court. You can visit those wonderful people at the Housing and Urban Development Association of Canada." You often come to the bottom line where a municipality that approved the development in the first place and supposedly monitored it all through the building process cannot do a damned thing when it comes to rectifying problems like that.

Are you suggesting this bill will allow them to say, "Pull the guy's ticket."

Mr. Bayne: No.

Mr. Breaugh: Well, then it is useless.

Mr. Rotenberg: If you have licensed builders. I do not

know. In one sense we do not license builders.

Mr. Bayne: Perhaps that was too short an answer. We do not license builders; we are not competent to license builders, I do not think, because there are no real guidelines. You can license a plumber, because the Ontario code says that he must have certain knowledge. Building is different. I think there are other areas of control; I do not see the municipal one as a good one.

Mr. Rotenberg: Mr. Bayne, under the legislation as proposed, if a municipality chose to license builders and the scenario came across as Mr. Breaugh has indicated, the municipality could then have a hearing and has the right to cancel that builder's licence if they feel it is proper to do so.

Mr. Bayne: Yes, that is fair to say.

Mr. Rotenberg: If I may proceed to another point, the bill, which was proposed last spring, was to come into force January 1, 1983. The bill in whatever form will probably not get royal assent until November or December. What kind of lead time do you as administrators of this bill think you will need, and when do you feel the bill should come into force? How long after proclamation do you feel you need before it should come into force? Have you given any thought to that? Originally, we were going to give you about a year's lead time.

Mr. Bayne: Yes. Mr. Woadden pointed out that this may very well depend on the size of the municipality and the complexities of their regulatory bylaws and so on. It might also depend to some degree on whether the province is able to assist in a model licensing bylaw approach or some direct assistance to municipalities. Or our own association, as Mr. Gunning has pointed out, perhaps would have to establish what we call a how-to seminar and instruct our people in it.

Mr. Rotenberg: We would have some guidelines. We would participate, certainly, in a how-to seminar on the understanding that, unless they conflict with the present act, all existing licensing bylaws would remain in force, because that is provided for.

Could your association indicate to us--not now if you think you cannot, but some time in the next short period of time--the kind of lead time you think you might need between proclamation and when the act comes into force?

Mr. Bayne: We would like to give that some thought.

Mr. Rotenberg: We talked about this bill giving you the right of quick reaction to a problem, and that, of course, is a two-edged sword, because sometimes a problem comes up and the council says, "Hey, let's do this," and then two months later they find they did not need that sort of thing.

There has been a suggestion that before a municipality enters into a new field of licensing, as they can now do virtually in any field, we put something in the act that a municipality must

have a public hearing to which the public is invited; and certainly the bird sellers, if that is one, would also be invited to present their views. How would you react to the idea that council must have a public hearing before they pass the bylaw to enter a new licensing field?

Mr. Bayne: I am not sure we addressed that.

Mr. Rotenberg: No. That is not in the bill; it is something that has been suggested as a possible addition to the bill.

Mr. Bayne: Since the licensing ability has been there, I would think, again from a personal point of view, that municipalities are not going to rush out and license everything. I think the easing in of licensing regulations as required is a reasonable approach.

I am not sure whether public hearings at the local level would be effective or not, because I am also concerned about the overreaction, if you like, of people who say that the council is just going to go out and license everything. I do not see that happening.

Mr. Epp: Do you expect that, because of the publicity on this bill and the fact that municipalities have powers to license that they are not necessarily perceived to have, a lot more people may come before councils asking them to accept new licensing powers and draw up new regulations? In other words, do you think there is going to be some kind of stampede to get them to regulate many more things?

Mr. Bayne: I personally do not believe that to be true.

Mr. Epp: You do not see that.

Mr. Bayne: No, I do not. I feel that municipalities now have the power to license. We often have people approach council who want to control some business or limit the number of businesses. My experience has been that our council does not react to that. If that is the point, I do not think they will get a response; but if it needs to be regulated, perhaps.

Mr. Epp: So it is really what council is going to perceive as where there is a need and where there is not, and they are making that analysis right now.

Mr. Bayne: In my view that is true.

3:50 p.m.

Mr. MacQuarrie: We had a couple of experienced municipal solicitors before us this morning in another connection, but one of the points they mentioned was that licensing was to a large extent intended to alleviate nuisance, if I can use the words that one of the counsel used. I just wonder how municipalities would act in situations where the community moved to the nuisance as opposed to the nuisance coming to the community, with a new

development coming adjacent to a use that would under normal circumstances not be an undesirable use but certainly with people close at hand would be very much of a nuisance.

I will give you a concrete example: a piggery part of a farm. The balance of a farm is usurped, developed as a residential community, sold and severed, and the piggery buildings remain very much a going concern. The people start complaining, as naturally they would. What does the municipality do then? Does it start licensing piggeries?

Mr. Rotenberg: Even if they did, they could not use Bill 11 to eliminate the existing one. They can have regulations for new ones.

Mr. MacDonald: That would be covered under--what do they call it in the Ministry of Agriculture and Food?

Mr. Stevenson: The code of compliance.

Mr. MacDonald: Code of compliance. Correct.

Mr. Stevenson: They should look after it.

Mr. Rotenberg: I think even next to a junk yard they still could not--

Mr. MacQuarrie: It is pretty difficult in some instances. Well, that is where municipal councillors and municipal officials do get complaints from the ratepayer who says: "Look, what can you do about this? What can you do about other things?" It is where, in effect, the subdivision or the development comes to a type of use that is certainly not desirable from the point of view of adjacent residential developers: you come to a quarry, you come to any of a number of undesirable uses of this.

Mr. Bayne: The ability to regulate or license probably would not help us much with the problem. They are there. The fact that you get a licence fee out of them really does not resolve the problem. I guess we really cannot address it in this bill.

Mr. Rotenberg: Mr. Chairman, there is just one more area I wanted to discuss with the deputation. As you said in number two of your brief: "The fee for licensing be restricted to the administrative costs, while enforcement costs should be absorbed in the general mill rate." I was not quite sure you included that in your discussion. Let me put it all out before you, and I would like your comments.

There are the administrative costs--that is, the cost in your clerk's department of issuing the licence and the cost of the necessary examinations. There are the enforcement costs, if you have to send an inspector out, just because he is not doing it.

Mr. Bayne: Bylaw enforcement.

Mr. Rotenberg: Bylaw enforcement. Then there are what we call inspection costs, the initial inspection; that is, say, if

you go into a big shop or a catering establishment or a catering truck, you have to inspect the premises or the vehicle initially. Then there could be the continuing inspection--that is, how often you inspect the big shop or the vehicle, and do you inspect it with your bylaw enforcement, with the board of health, with building inspection and so on? How much of these costs are administrative? Then there could be an annual inspection each time the licence is issued. Are you going to go back and look at the big shop or the catering truck or the pool hall or whatever?

So there is administration, enforcement, initial inspection, continuing inspection and annual inspection. How much of those do you think are properly within the cost recovery of the fee and how much should be on the general taxpayer? I have covered all the points that should be there, if you understand where I am at.

Mr. Bayne: I think the position we have taken is that the licence fee should cover the administration costs. We do not necessarily suggest that the fee suggested may necessarily cover that; however, we accept the thinking of the drafters of the legislation in that area. The cost of bylaw enforcement, where you go out and use the regulation to clean up a situation, since it is, in our view, in the best interests of the citizens at large to do that, we feel that cost should be part of the cost of doing business for the city and not chargeable directly to the person or business being regulated.

Mr. Rotenberg: Is an initial inspection of a premise, such as a bake shop that happens to run a restaurant, part of the administrative costs, or should it be charged into the cost recovery of the licence or as part of general revenue?

Mr. Bayne: We feel it is really part of the administrative cost of issuing the licence.

Mr. Rotenberg: Then, of course, every year you have to go back and inspect. That would be an administrative cost.

Mr. Bayne: That's right. It would be a renewed licence.

Mr. Rotenberg: If there is an inspection because of a complaint--let's say someone says, "That bake shop is dirty," or "The restaurant is dirty,"--and you have to send out an inspector to say whether his licence should be continued, not if that is a continuous inspection, would you consider that part of enforcement and, therefore, part of the general legislation?

Mr. Bayne: Yes.

Mr. Rotenberg: What you are saying is those things that have to be done on issue of a licence or reissue of a licence should be in the fee for cost recovery, and those things that are continuous, inspection for that person and enforcement, should be in general revenue.

Mr. Bayne: Yes.

Mr. Rotenberg: I think I understand.

Mr. Nigh: I would just point out, Mr. Chairman, that does, in fact, occur right now. Our public health inspectors go out on those kinds of complaints, for example, inspect and do whatever is necessary. That is charged to the general mill rate and everybody pays. What was suggested is a continuation of what presently exists.

Mr. Rotenberg: But if the inspector goes out to inspect a new premise for a licence, that still goes into the general mill rate. He does not charge it back to your licensing (inaudible).

Mr. Nigh: He doesn't in our case because we do not issue the licence, but in other cases that may very well be.

Mr. Bayne: But in our case usually the fees for licences are so small still that they do not really necessarily cover all those (inaudible).

Mr. Rotenberg: But the point is, in our original bill, two versions ago, once we had no fees and once we had a fee of a maximum of \$20 or \$25 on representations, I guess more from the Association of Municipalities of Ontario than from yourselves. We have now put in this cost recovery clause. From your point of view, and I want to ask AMO the same question, what should be in cost recovery? I think I have your answer and I appreciate it.

Mr. Chairman: Those being all the questions we have, I wish to thank you, gentlemen, for being here today and taking your time being with us. We will now adjourn until next Tuesday morning at 10:00 a.m. You have your up-to-date schedules.

Mr. Breaugh: Just before you do adjourn, can I put a little pitch in here? There are a couple of groups I know of who have contacted the clerk about appearing before the committee and they are on the schedule. All I want is a simple assurance that anybody who wants to be heard will get a chance next week to be heard. The committee has not exactly killed itself with public hearings this week and, if it meant a little extra work next week, I think we should be prepared to do that to hear any group that wants to come before us.

Mr. Epp: I suggest you have to use the words "within reason." I'm sure if we had 100 groups next week, you are not suggesting we hear all of them.

Mr. Chairman: I know what Mr. Breaugh is saying. We know of a couple, and we do have still six or seven spots open. At this point, I do not see any problem.

Mr. Breaugh: All I want is your assurance that next Wednesday, if somebody comes in, the committee does not turn around and say, "Listen, we do not have time to hear you." I am just making the argument that for a variety of reasons, we were unable to have full hearing days this week, and if it means we have to put in a few extra hours next week we should do that to allow anybody who wants to appear before the committee to appear.

Mr. Chairman: I would say unless they come along at 3:30 p.m. next Thursday--

Mr. Breaugh: No, I am not talking about that.

Mr. Chairman:--or that kind of thing. I would point out that next Thursday looks to be the heaviest day of all. We have the two licensing outfits and AMO and so on. I hope any group will get to us on or before Tuesday so we can poke them in, because that is when we have the spots, Tuesday and Wednesday in particular.

Mr. MacDonald: Have you had any clarification as to the Steven Kolas' presentation?

Mr. Chairman: Yes. It appears that the group is considering its choice of solicitors. We will perhaps--

Mr. MacDonald: The reason for my asking is that he obviously had internal difficulties to resolve. I have been contacted by a person I think is in one of the conflicting groups within his organization. Some time soon, it should be said that, if he cannot speak for them all, perhaps we should give an opportunity for the conflicting groups to present their views.

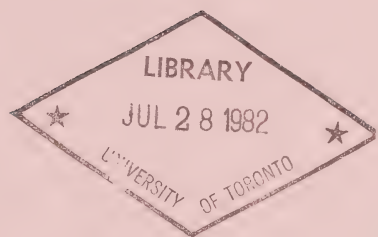
Mr. Chairman: The clerk has been contacted by a solicitor who is acting for at least some of those persons in the group and will be scheduled next week. We are in contact with them.

The committee adjourned at 4 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

MUNICIPAL LICENSING ACT

TUESDAY, JULY 20, 1982

Morning sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breaugh, M. J. (Oshawa NDP)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Epp, H. A. (Waterloo North L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

MacDonald, D. C. (York South NDP) for Mr. Swart
Spensieri, M. A. (Yorkview L) for Mr. Elston

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of
Municipal Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

From the Ministry of Municipal Affairs and Housing:
Sypnowich, M. A., Manager, Functions Policy Section, Local
Government Organization Branch

Witnesses:

Gillespie, G. F., City Solicitor, City of Sarnia
Oakes, E., Regional Solicitor, Regional Municipality of York

From the Independent Cab Owners Co-operative, Inc.:
Bend, L., President
Sneddon, T., Vice-President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, July 20, 1982

The committee met at 10:08 a.m. in room 151.

MUNICIPAL LICENSING ACT
(continued)

Resuming consideration of Bill 11, An Act to provide for the Licensing of Businesses by Municipalities.

Mr. Chairman: We have a quorum. (inaudible) before us, quite frankly, their interest having been very much like that of Windsor and Kitchener, so you might just follow that and read that at your convenience.

Mr. MacQuarrie: Mr. Chairman, will arrangements be made to have this made officially part of the record?

Mr. Chairman: It is part of the record now, I believe, since I mentioned it as exhibit 10, a letter dated July 16, 1982, from the city of Cambridge on the subject of Bill 11.

Gentlemen, you will notice a new agenda in front of us. It is certainly full for this week. This morning we have three groups in front of us. We will perhaps try to have those groups limit themselves to three quarters of an hour each. That would possibly finish the morning up in time for a heavy afternoon.

Exhibit 9 is a brief from the region of York, and I believe you have that with you. We have Mr. Oakes, the regional solicitor for the region of York, and also Mr. Gillespie from the city of Sarnia. Are you both appearing at the same time? This isn't a joint appearance, is it? That's fine. We will hear from Mr. Oakes first, if we may.

Mr. Oakes: Thank you, Mr. Chairman. I will be as brief as I can.

Mr. Chairman: Fine. You can sit down, not only because you can relax better, but because you are closer to the microphone.

Mr. Oakes: I would like to commence by reading a passage from the title page of my brief, "The views set out in this brief are purely personal and are not intended to represent the opinion of anyone other than the undersigned." I am the regional solicitor, but I am here in my personal capacity. That is the only passage from the brief I intend to read.

I should start by saying what my qualifications are, if any, to speak on this subject. As perhaps many of you know, the Metropolitan Toronto Licensing Commission was formed in 1957 to take over responsibility for all municipal licensing in the Metropolitan Toronto area, except the licensing of dogs and dry

cleaning establishments. The area municipalities used to say they were taken to the dry cleaners or they went to the dogs. I don't know why those exceptions are there, but they are. I was responsible for the legal work of the Metropolitan Toronto Licensing Commission from 1957 to the mid-1960s, and whatever I know about licensing I learned during those years.

10:10 a.m.

As I say, at Metro, the licensing commission, which was a metropolitan body, was responsible for all municipal licensing. I had to attend the meetings of the commission and often, when we sat and heard a contested application for, say, a pool hall licence at St. Clair and Ossington in the city of Toronto, or an application for a licence for a public hall in some area of the borough of Scarborough, I used to be struck by the fact that the concerns being raised were of absolutely no significance at the metropolitan level.

We would hear talk about depreciation of property values or noise, all extending over an area of, say, a block or half a block from the site of the licence, a subject, as I say, of absolutely no concern or significance at the metropolitan level, but obviously of very great concern at the local level. We used to have before us residents from the neighbourhoods and sometimes delegations from the local councils. I often thought this was a matter that would be far better dealt with at the local level, because that is where the concerns were. The people on the local council would be people who have a far greater knowledge of those concerns and of the facts of the case than we ever possibly could. But in Metro, those things are decided at the Metropolitan level.

Under the proposed bill that sort of situation will not arise, because all licensing is to be given to the local municipalities. To that extent, the bill, in my submission, is good and desirable. But perhaps it goes too far and creates another difficulty in the opposite direction. I have set out on pages 3 and 4 of the brief the types of businesses that are now licensed by municipal councils. If you look at them, you will see they divide into two categories. The division is not in the statute, but comes from the nature of the business that is being carried on.

Some of the businesses are operated from fixed premises. I put them in category B at the bottom of page three and continuing on page four: Adult entertainment parlours, barber shops, pool halls, dry cleaners, cigar stores, restaurants, all that kind of thing. They operate from a given, fixed location, and they are in the most numerous category, obviously. Those are the businesses that in my submission are properly licensed at the local level because the concerns to which they give rise are local concerns.

You are talking about zoning, and that is a function of the local municipality. You are talking about noise, perhaps, or other nuisances, and that is a function of the local municipality. You are talking about property values over a small area and those are all local concerns.

The other businesses do not operate at any one fixed location. I have listed them in category A. In many cases, they do not operate within the boundaries of any one municipality: auctioneers, taxicabs, tradesmen, contractors, electricians, plumbers, that sort of thing.

Mr. Breithaupt: In your brief you have that reversed, I think.

Mr. Oakes: I divided them into A and B, and A lists the ones that operate over a larger area.

Mr. Breithaupt: That is not what it says on page 4. I think that may have been reversed.

Mr. Oakes: I am sorry, that is reversed. This was done earlier and I have not read it, as a matter of fact. It is reversed. That should be B and A.

In my submission, with regard to the A type of business, different considerations arise. They do not, except in the very large centres, operate within the boundaries of any one municipality. In fact, in the smaller centres, there is not enough population in any one municipality to allow that type of business to operate.

I have distributed on your desks a map of the York regional area that will show you what I mean. You can see the town of Newmarket up the centre core. There is the town of Newmarket and the town of Aurora. You can see the populations. There is the town of Whitchurch-Stouffville, whose total population is 13,000. There is King township, which has a relatively low population. There is East Gwillimbury with a population of 12,000. There is not the population there to generate enough business for these types of operations to be carried on in the one municipality. This means that at the local level these municipalities cannot effectively regulate such business.

I will give you an illustration. Whitchurch-Stouffville, a few months ago, passed a lovely new licensing bylaw for taxicabs. The councillors, no doubt, thought they were doing a good thing. They decided what fares they wanted the cabs to charge in Whitchurch and they put in a tariff for fares. In due course, it came to the attention of the fellow who operates the taxicabs in Whitchurch. He went to the council and, in a very nice way, told it he had no objection personally to its tariff of fares. They seemed to be equitable and, on the merits, there was nothing that could be said against them.

But the bulk of his business was done in the municipality of Markham to the south. His taxicabs were equipped with meters that were calibrated on the Markham fare structure, so there was no way he could have the one meter calibrated on two fare structures and he could not install two meters in the cab.

He had to tell the council in a very nice way that, if it insisted on that fare structure, he would have to abandon Stouffville as far as his business was concerned. He is the one

who is doing the bulk of business in Stouffville, and they have a hard enough time getting a taxicab up there in any circumstances. After due consideration, the council had to repeal that and put in a fare structure that was identical to the Markham fare structure. As far as Stouffville is concerned, it has the Markham fare structure or it does not have anything.

I read in the paper a couple of months ago, to give another example, that the town of Aurora had passed a bylaw that said that any licensed business in the town of Aurora had to have an office within the town limits. Again, the papers reported a couple of meetings later that the fellow who does the bulk of the taxi business in Aurora came to them and said: "Gentlemen, my company's office is in Newmarket which, as you can see, is the small municipality to the north of Aurora. There is not enough business generated in Aurora for me to justify the expense of starting up an office in Aurora. I can't move my office to Aurora, and I can't have another office in Aurora, because I simply do not make that kind of money out of the taxicab business in Aurora."

I did not see anything more about it in the paper, but yesterday, as a matter of interest, I telephoned the clerk and asked what happened. The clerk laughed and said, "Well, they measured the distance from this fellow's office to the centre of Aurora"--I don't know what it was; something like five kilometres--and the bylaw was amended to say that every business operating a licence in the town of Aurora had to have an office within five kilometres of the centre of town. I said, "What are they going to do when he moves?" He is in a rented place in Newmarket. She said, "I guess we will amend the bylaw."

You are not effectively regulating on that basis, and, in my submission, you cannot effectively regulate when the operations of the business extend beyond the municipal boundaries.

King township was faced with the same situation a while ago. King township took the radical solution and repealed its taxicab licensing bylaw. It said there was no way it could effectively regulate the thing, and it was a facade to have a bylaw, because every time the licensees do not like it they just come in and tell the council it has to change it or they will pull out. So the council repealed the whole bylaw.

What you are going to have, if you maintain this structure, is some areas like King township where there are no regulations and other areas where, in effect, the citizens are second-class citizens, because they are being regulated by regulations passed by another council.

10:20 a.m.

Whitchurch-Stouffville in many respects is regulated, as far as taxicabs go, by what Markham does. If Markham puts in a regulation, Whitchurch has pretty well got to adopt it if it does not want to lose their business. Yet the citizens of Whitchurch do not have any voice in electing the Markham council. They do not have a say in the regulations by which, in effect, they are being governed.

Looked at from the point of view of the businessman, it is equally an undesirable situation. The fellow who has a business of this kind in Aurora, where there is not enough business in Aurora to keep him going, is operating in Newmarket, he is probably operating in King township, he is likely operating in Stouffville, he is probably operating in Richmond Hill--all the surrounding municipalities.

He has to have a licence from each of those municipalities if he is going to operate in them. He has to be governed by the regulations in those municipalities, which are sometimes conflicting. Sometimes, as in the instances I gave you, it is impossible for him to be governed and he has to go before the council and point this out. They either drop the regulation or he has to drop out of business in that area.

It is not because he is not qualified to do it, it is not because he is not competent, it is not because he is not of good character, but simply because it is an impossibility for him to abide by the regulations because there are other regulations somewhere else where he generates more business, so that is what he is going to abide by if he has to make a choice.

So he is faced with a multiplicity of licensing and he is faced with several levels of bureaucracy that he has to deal with, all of which has to add to the cost of doing business. I do not see why we have to impose that kind of thing on a businessman, especially in today's economic climate.

My submission to you is that businesses which operate at a fixed location should be licensed by the municipality in which that location is situate. Businesses whose operations, by their nature, extend beyond the bounds of any one municipality should be licensed by an authority whose jurisdiction is co-extensive with the area of operation of the business. That would be a metropolitan, a regional or a local government.

The businesses in the first category, the local businesses, will be by far the more numerous, but there will be some, mostly trades and the taxicab business, that operate over a wide area.

Ironically, the one area of the province where probably there is enough business within any one local municipality to keep these things operating is the Metropolitan Toronto area. That is the one area of the province that, under this bill, is going to be regionalized. That is the one area where the scheme under this bill could probably operate, but this bill is not going to operate in Metropolitan Toronto.

Gentlemen, that is my principal submission. If there are any questions I will be pleased to deal with them.

Mr. Rotenberg: Mr. Chairman, just to comment on what Mr. Oakes has said, Bill 11 does not and will not change the split of jurisdiction between regional governments and local municipalities. Every region has certain licensing functions it has taken upon itself and the residuals remain with the local municipality.

In York region there are very few. The regional authority licenses drain contractors, plumbers, septic tank cleaners and lodging houses. Metropolitan Toronto, as Mr. Oakes has said, has just about everything except dry cleaners and puppy dogs.

Different regions have taken upon themselves different licensing functions. It is the philosophy of the ministry, unless something comes forward which changes our thinking, that the split of jurisdiction between regional councils and local councils should be at local option. That is, if a regional council wishes to take upon itself, as York region may wish to take upon itself, certain functions, and there are reasonable grounds for that and not too violent objections from local municipalities, then it would be our intention to amend the regional acts, as we have done in the past upon request.

We had not contemplated, and I do not think we would contemplate, forcing upon regions these splits in jurisdictions. Mr. Oakes has suggested the transient trade would be a regional function and the others would be local functions. We feel, or have up to now felt, that that split of jurisdiction should be left to the local politicians to decide whether or not they want to have certain licensing functions be regional or local functions.

We have legislated, within the regional acts, to accommodate those requests without trying to force anything on anybody. I just want to put that out as the background of our philosophy, to indicate where we stand on the point that Mr. Oakes has made.

Mr. Brandt: Has the co-operative thrust you are talking about been working in the past, or do you get the kind of competitive jurisdictional disputes that go on between regions and local municipalities vying for some kind of control? Has that been a problem in the past, as has been cited here in the presentation?

Mr. Rotenberg: Not so much a problem of that. There are many regional municipalities who, for whatever reason, have not wanted to take upon themselves, as Metro has, the function and the responsibility of licensing. While Mr. Oakes may feel that something like taxicabs should more likely be a function run by the region of York rather than by the individual municipalities, the region of York itself has not requested to take over the taxi function.

If there is any problem, Mr. Brandt, I think it is in the fact that the regions have been somewhat reluctant to get into the licensing business on a broad basis--except Metro, and some more than others but most of them on a very limited basis. To my knowledge, there have not been any real fights between local municipalities and regional governments. The regions really have not expressed a desire to get into it.

Mr. Oakes: Nobody wants it. The only fight about licensing these headaches would be to try to foist it off on to somebody else. Nobody is going to ask for that kind of headache.

Mr. Rotenberg: Licensing is optional. If a municipality does not want to license anybody, it does not have to. It is all

permissive legislation. Our feeling is that that is the way it should be. If a region does not want to get into a particular licence and the local municipality does not want it, that is fine. Mr. Oakes put it correctly, they are not lining up to get legislation to take over licensing functions.

Mr. Oakes: They sure aren't.

Mr. Brandt: The kind of problem that has been outlined here is perhaps even more critical in areas that are not regionalized where you do have conflicting bylaws and attitudes, where urban areas are side by side and where there have not in many instances been any boundary adjustments that have occurred to resolve those kinds of things. I think it is a problem and one that has to be addressed. I do not know how we can do it. Effectively you are saying Bill 11 does not change what is in place now.

Mr. Rotenberg: That is right. Bill 11 does not change what is in place now, which is, in effect, that the only thing counties license now is auctioneers. It reduces the county's power somewhat. Outside of regions, there has been no licensing across municipal boundaries. I do not think we have had any requests for it, but we feel that licensing is a local matter.

Mr. Brandt: The fact that there has not been licensing across municipal boundaries does not necessarily mean that there has not been a problem.

Mr. Rotenberg: It may have been a problem, but to my knowledge there have not been any requests from, say, two adjoining municipalities--let's say London and Middlesex counties as an example--who have a joint taxi licensing function. We have not had those kinds of requests outside of the regions on any basis. If we start getting a lot of them, then I think we would look at it, but up until now we have felt that licensing, as zoning, should be within the local municipality.

It has not been a problem from council's point of view. It may have been a problem from the point of view of some people out there who feel there should be a broader base of licensing or co-ordinated licensing--as in the region of York, co-ordinated taxi licensing--but to my knowledge neither the taxi industry nor the politicians in the region of York have come and asked us for that power. If York regional council wanted to have regional taxi licensing, which they do not, and the local municipality seemed amenable, we would certainly add that to the Region of York Act.

Mr. Oakes: Strangely enough, the licensing power they gave us is one that, in my submission, should be local. It is lodging houses.

Mr. Rotenberg: Yet you have probably got it in the region of York because it was requested by the council. Unless there is some very good reason why not--

Mr. Oakes: If I might say one more thing on that, I think that request was made about two years ago. That bylaw has

never been passed. We are still fooling around with it, if I can use that expression.

Mr. Rotenberg: If for some reason the region of York decides it does not want that power any more and would like it deleted from the act, again we would probably do that. The whole basis of this licensing bill is permissive local option. Therefore, we want to have that philosophy of local option right through as to the split of powers between regions and local municipalities.

Mr. Oakes: In my submission, the local option should be maintained in that the exercise of the power should be permissive, but the area or the jurisdiction where it is going to be exercised, if it is going to be exercised at all, should be in keeping with the nature of the trade that is being licensed.

Mr. Rotenberg: Mr. Oakes, I can understand that point of view, but again we feel that different regions may have different reasons for wanting to do things differently. I do not think we should make that split of jurisdiction the same for all regions. We should allow each region to decide on its own, in consultation with the local municipalities, what powers it wants to have.

10:30 a.m.

Mr. Oakes: Mr. Chairman, that ends my brief, but I would like to say one word on licence fees if I am not trespassing on your time.

Mr. Chairman: No. That is fine.

Mr. Oakes: The philosophy of the bill, if I can use that expression, is that municipalities are not to make a profit out of licensing. Traditionally a profit has been made from licensing. A licence fee as it exists under the Municipal Act--and this is also in the British North America Act--is in the nature of a tax to raise revenue.

This bill would change that very dramatically and would either set a licence fee which in most cases, and certainly in the case of the trades that demand regulation, which are the trades that operate over a wide area, would not reimburse the municipality for the expenses incurred, or it would provide that the municipality could enact a licence fee which in effect would put it in a break-even position. But the way that clause of the bill is worded, in my submission, is completely impractical; it could never work.

Licence fees are levied at the start of the year. Licences usually expire on December 31 and they have to come in and renew their licences in January of the next year and pay the fee. There is no way that a municipality can know at the beginning of the year, (a) how many licences are going to be taken out--in other words, what its revenue is going to be--or (b) what its expenses are going to be in that forthcoming year. There is no way it can know with certainty. Yet under the bill as it exists they would have to know that. I am not going to say too much on this because

Gerry from Sarnia, who has a much better knowledge of it, is going to make a submission in that regard.

If you wanted to do that, I think you would have to put it on an estimated basis. With my brief I have included a suggestion as to the form the legislation might take. The amendment would be that the fees would be fixed in an amount to coincide with the expenses that would be incurred as set out in the estimates. As you know, at the beginning of the year every municipality has to adopt estimates of its revenues and expenditures for the coming year.

Mr. Rotenberg: May I interrupt you, sir, to indicate that it is a point that has already been drawn to our attention? The point is well taken. We are going to consider of amending it. You are correct; the way it is written now may be a little difficult.

Mr. Oakes: It would be more than a little difficult, Mr. Rotenberg; it would be impossible.

Mr. Rotenberg: The impossible we do right away; miracles take just a little longer.

Mr. Oakes: When I looked at it, I said obviously that was written by somebody who did not have any municipal knowledge at all. Then it occurred to me that it was probably done by Mr. Fader in the draftsmen's office, who for years was the solicitor for Scarborough, and I had to take that back. They seem to forget what they know when they come down here.

An hon. member: Not always.

Mr. Breithaupt: Now the city solicitor from Sarnia can talk about the local member.

Mr. Brandt: Yes, because he was here at one time and left this great hallowed hall and moved to Sarnia, so he has the reverse experience.

Mr. Oakes: That submission I made, that suggested change, is only if you adopt the philosophy of course that the fees should do no more than allow the municipality to recoup its expenditures. I personally do not agree with that position.

Mr. Chairman: If you have the time, Mr. Oakes, stay around a bit during the questions of Mr. Gillespie. We may have some questions of you as well.

Mr. Oakes: I would be glad to stay.

Mr. Chairman: Mr. Gillespie, would you carry on please, on behalf of the city of Sarnia?

Mr. Gillespie: Mr. Chairman, I am solicitor for the city of Sarnia and have been for the past nine years or so. I would say at the outset that I have learned from our former mayor, Mr. Brandt, the great virtue of brevity, so I shall be very brief.

Mr. Eves: He has changed.

Mr. Rotenberg: Because of Mr. Brandt's long-windedness he learned about brevity.

Mr. Brandt: We are getting off on the right foot.

Mr. Rotenberg: He lost one friend and gained eight others.

Mr. Gillespie: I am instructed to relay to you the views of Sarnia council about this proposed bill and remind you that, unlike my friend Mr. Oakes, we are concerned strictly as an area municipality, not in a regional context since we have not had a boundary adjustment or regionalization of anything in a long time.

First of all, Sarnia council appreciates the thrust of the bill in eliminating the multiplicity of licensing powers and the clarification of jurisdiction to license all types of business that will come with the bill. Also, they feel the proposed five-yearly review of licensing makes good sense.

However, they do feel very strongly that these matters should be accompanied by a clear setting-out of ability to delegate parts or all of the process to enable sensible handling of the applications, and it should also be accompanied by a much more substantial set of licensing charges.

Essentially, Sarnia council takes issue with two principles of the bill. The first issue is, as I said, with the process being established. On reading the bill, you find it spells out delegation in exactly one instance, that is, where there has to be a hearing in the event of proposed revocation or cancellation of a licence. They feel that, on a strict reading of the bill, the implication of that is every licence application has to go on a council agenda to be considered by the council. It has been relayed back to us---

Mr. Rotenberg: That is not our reading of it. We read it that the routine applications are to be handled by the clerk or by a municipal employee who would deal with the routine applications that come forward that meet our criteria now. If there is a technical amendment required we would do it, but our reading of the bill is that is not necessary and our philosophy agrees with yours.

Mr. Gillespie: I understand your philosophy on it and I have seen this response from the minister, but that is our reading of the bill when you take it strictly, given that there is a specific delegated provision that the remainder cannot be delegated in any way, shape or form. This we feel to be technically correct under the bill.

We feel it would be burdensome for the council, considering that in Sarnia alone we issue over 700 licences a year in about 35 different trades or callings. The council believes there is no good reason for not giving the power clearly to delegate to an officer or to a commission and thus make it clear that the council

can lawfully, and not just as a matter of getting away with it, carry on with the type of process as it has now, where the clerk handles the bulk of the applications and the remainder are dealt with through the police commission, in callings such as scrap yards, salvage dealers, and so on, the latter being areas where the chief of police strongly believes it is beneficial from his point of view to have them under the control of the police commission, from a point of view of monitoring crime and keeping track of stolen goods, and so on.

I may say this type of clear delegation exists elsewhere in Ontario legislation. For example, the development control section of the Planning Act, clause 40(10)(b), stipulates clearly that councils can delegate all of their functions under that section to an officer or to a committee of council, with one exception, that is definition of classes of development. So council is saying really: "Would you please simply say that? It looks as if you can delegate the routine functions but put it in the legislation to make it clear."

The second point in principle with which they take issue is the proposed fee structure. There is no doubt that the 100 per cent increase in the fee structure that is now shown in this bill, as compared with about three years ago when the bill was first circulated, going from \$5 to \$10 and now \$25 with an inspection, is an improvement.

The council's position is it should have the discretion, notwithstanding the policy being proposed in this bill. It should have a discretion to charge a much higher fee than that and it is suggesting as a ceiling figure something of the order of \$150.

That would give a much more realistic range within which to operate. In any event, the council is strongly of the mind that the proposed fee which would be established by the bill is woefully inadequate considering that for decades much higher ranges of fees have been available to the council. But, again, that is a matter of a difference of principle where the council feels it should be able to make some money on licence fees.

10:40 a.m.

Their final point is they feel that, in the event these concerns cannot be accommodated, the legislation may well be a disservice to municipalities and could cause delays in the processing of licences. They feel that municipalities should not be coerced into the new process which they feel has this basic flaw on the delegative side and, secondly, too small a fee availability. They feel it should be redrafted to enable it to be optional so that, were they to choose to do so, they could keep their present system which seems to work very well in Sarnia.

Mr. Rotenberg: Just while you were talking I was conferring with our solicitor who feels it is not necessary to change the act as far as delegation is concerned because the hearing is a statutory hearing. However, I would give our ministry's commitment that we will review this and we will make sure the act is written in such a way that it is interpreted that

routine issuing of licences can be done by municipal officials. That is our intention, so we agree with you on that point.

I think you mentioned police commissions and that was in your letter to us. As members of the committee know, in the present legislation some licensing function is done by police commissions and we are taking the function away from police commissions and giving it to municipal councils. This is agreed upon by the Ontario Association of Chiefs of Police.

I think Sarnia is the only municipality that has some objection to the function being taken away from the police. This does not in any way take away the co-ordinating function which works so well in many municipalities where certain applications are automatically referred to the police commission or the police department for a report on an applicant for a licence. In other words, a police report is part of the licence application but the actual authority to pass bylaws and issue licences is put to the council or its officials.

As far as the fees are concerned, I think we have discussed this. One of the philosophies of this bill which is pretty firm government policy is that municipalities should not be able to make a profit on fees. In other words, it should not be able to set the fees for certain categories of licences that would make the fee prohibitive.

In effect, the fee setting would be a prohibition rather than just a fee. I would point out to the deputation from Sarnia that, if the fee is \$10 or \$25 or as we have just discussed the fees can be set on a cost recovery basis, as we discussed with Mr. Oakes, you can estimate what it is going to cost you to administer your licensing and then set your fee so that you will be able to recover the cost of your administration, which could be in some cases considerably more than the \$25 fee or the \$10 fee if there is no examination.

We feel very strongly fees should not be set--for an example, somebody is mad at auto driving schools so you might set a fee of \$10,000 for driving schools to drive them out of your municipality. That is the sort of thing which we simply do not want to have in our act. That is a far-out example, but we are not in favour of fees being set so they are prohibitive and therefore we put the restrictions on the fees.

I may say to the solicitor for Sarnia and to members of the committee that the Association of Municipal Clerks and Treasurers of Ontario, which was here last week, and the Association of Municipalities of Ontario have indicated to us they are quite content with the fee structure which is on a cost recovery basis. Sarnia may dissent from that point of view but it is our information that the vast majority of municipal politicians and municipal clerks and treasurers are in favour of the fee structure we have in the present bill.

Mr. Gillespie: If I may make just two brief comments on that, I take it that if there is indeed clarification to an officer, for example, of the administration of the licensing

function, this is something that councils will be able to perhaps split in a sense. They could have the majority of the business licensing go through the clerk and then perhaps the things the police commission now handles could be delegated to the chief of police as an officer, too, to handle. Would you see that as--

Mr. Rotenberg: I really do not see any prevention of that. The point is the bylaw must be done by council. Any appeal from a refusal or a cancellation must go to council or a committee that council delegates, but the way council administers is as it administers everything else. It is up to the municipal council as to how it administers it.

I am not going to tell any municipality how to run its business, but it would seem a little strange to have two different bodies issuing licences, with the clerk or some officer issuing the licences and certain kinds being referred to the police for a report. But how you function is really a matter of each municipality choosing how it does it.

It is like any other municipal function. I do not think there is any problem as far as delegating an official of the municipality to do the administrative work is concerned. Your clerk or your treasurer collects taxes. I do not think there is anything in the act that says who collects the taxes and takes in the money. He just does that. It is up to the municipality how it does it.

Mr. Gillespie: There appear to be in the proposed bill certain selectively higher fees chargeable for certain types of things deemed to be associated with immoral matters. So really on a moral standards basis one can, in effect, prohibit by charging a high fee.

Mr. Rotenberg: There are three things in the bill. There are taxicabs, which are not immoral. It is because of the nature of the business. There are the body rubs, which seem to have pretty well disappeared from the scenes. There are what are called adult entertainment parlours. We are going to have a delegation from those people.

That has been in the previous legislation, the Municipal Act, and these sections are lifted from the Municipal Act. There is no change in that. But you are correct. There are those specific exemptions. There has been a request from some municipalities that the video game parlours also have some exemption from the general rule.

Mr. Breaugh: I would like to ask a couple of questions around the fees. I really have not been able to understand why it is written in provincial law precisely how much a fee for a given licence may be. I would like to get Mr. Gillespie's comments on his municipality's reaction to this.

I think the province has clearly established that it does not want the fee schedule to be prohibitive in nature. It is not intended to be a source of revenue for a municipality. Under this act, if somebody somewhere is doing something really contrary to the principle, the province can intervene and overrule.

With all those provisos in there, what would be wrong with abandoning the dollar concept as laid out in Bill 11 and going for the alternative, which is also laid out there. In other words, why do we not finally say: "Municipalities have a clear understanding of what the province means by a licensing fee. It is not to be prohibitive. It is not to be a source of revenue. It is meant to recover your costs. Once and for all, you can now set your own fees." Could your municipality cope with that? Would it lead to any great problems?

Mr. Gillespie: I do not think our municipality would react that there was anything wrong with that. I think they would continue to disagree with it from the point of view that traditionally it has been, in part, a source of revenue and they would like it to continue to be. It is as simple as that.

Mr. Breaugh: In your municipality, if we took out of this bill those two sections with dollar amounts attached to them, \$10 and \$25, and we simply left the section in here--and perhaps we might elaborate on it a bit to stipulate that it is not meant to be a taxation device. You might make some money on it, but the basic purpose of the exercise is to make your licensing operation self-sustaining, and we gave a pretty clear indication that really meant probably this year it would be somewhere around the \$10 level, but it would not be in the act itself--could your municipality not handle that quite nicely?

Mr. Gillespie: They could probably find it much more acceptable if there was no specific dollar amount. It would give them a little more flexibility.

As the member points out, I suppose there would always be the right of the province to intervene if there was a complaint and they had been found to go overboard on it. I think it would certainly be more palatable to the council.

Mr. Breaugh: Do you have any understanding, because I do not, as to why municipalities in particular get nailed with this dollar amount? Traditionally, that is the way it has been done, but I am at a loss to understand why.

Mr. Gillespie: In the legislation?

Mr. Breaugh: Yes.

Mr. Gillespie: I do not quite understand the question.

Mr. Breaugh: For example, when Ontario sets licence fees, I cannot think of an example of a licence fee which is set in law. They are done by regulation.

If the Ministry of Transportation and Communications decides that drivers' licences or car licences ought to go up by a couple of dollars, it does that by regulation. It does not pass a law every year which changes that. Why could we not adopt the same principle for municipalities?

Mr. Gillespie: That certainly seems eminently reasonable.

In many cases over the years, the Municipal Act seems to have specified licence fees in some cases and maximums in a number of cases, ranging from \$10 to \$20, \$50, and so on.

10:50 a.m.

Mr. Breaugh: I wonder if the parliamentary assistant could take a shot at that. Why can't we just write legislation which clarifies what the intent is: that it is not to be a money-making operation but does not have an actual dollar amount in it?

Mr. Rotenberg: I guess we could. Really, the principle is cost recovery, but there may be some of the smaller municipalities or some larger ones that really do not want to get into the whole accounting process. If they do not want to get into that, we say that licences should be nominal fees, which is \$10 for a normal licence, \$25 for some examination. That is option A.

Option B is really what you want. It says that the municipality can get the whole administrative cost of licensing, then divide it by the number of licences and that is the fee. It is not a profit-making venture.

If they do not want to go under the more complicated justification of the licences, which they would have to do on some reporting basis and in their auditing and so on, they would just charge a nominal fee for licences.

Mr. Breaugh: Wouldn't that be fairer than having the two schedules, one of which is a dollar amount fixed by law, and the other, which appears to encourage some kind of prohibitive licensing fee?

I do not quite understand how in some instances you are making the argument that it can only be on a cost-recovery basis and that that is the principle on which licence fees are charged. You are saying, and it is true, that in some other instances, licensing under the same bill, you are going to allow them to charge \$2,000 or \$3,000, when you know that that it is not anywhere near the cost. It might not be prohibitive in nature, but it is pretty close.

Why don't you just establish one principle, that licence fees are according to what it costs a municipality to process that? If they get out of line, you have a right to intervene. I do not think anybody out there is going to be accused of setting licence fees too low. If they did, it would be a first in the history of any government.

Mr. Rotenberg: There are two classifications: the taxicabs, which also violate the principle, or are an exemption to the principle of nonmonopolistic, where municipalities can limit the number of taxicabs. When you limit them, there becomes a value to it. The municipalities can charge a higher fee for a taxi licence. That is one category.

The second category, which we will be hearing from this

afternoon, is the "adult entertainment parlours," where there is a higher fee allowed. We will be hearing from the Metropolitan Toronto Licensing Commission next week. They have indicated to us already that the cost of enforcing those laws is much higher than most. They can almost justify the cost of adult entertainment parlours on a cost-recovery basis. We should discuss those with them next week.

The taxicabs and the adult entertainment parlours are the exceptions. They have been in legislation for a number of years. Regarding the adult entertainment parlours, you have raised the issue. This is something this committee will be discussing. But in this bill we have continued the present legislation of the Municipal Act that adult entertainment parlours cannot have much higher fees beyond cost recovery.

Mr. McLean: Mr. Chairman, could I have a supplementary to Mr. Breaugh's question? Under the present legislation, would it not give the municipalities the right to group certain licensing regulations, whether for gas stations or small areas, and have, say, about three different groups that could come under this fee schedule that is laid out? They could pass their bylaw under that regulation.

They could have another group where they could pass a bylaw. It would include where they may fix fees for licences. Such amounts as the total fees paid to the municipality for licences would not exceed the total expenditures to do that.

Mr. Rotenberg: Are you talking under Bill 11 or under existing legislation?

Mr. McLean: Under Bill 11.

Mr. Rotenberg: Under Bill 11, under cost recovery is our interpretation as we have written it. For certain different categories of licensing it is going to cost the municipality far more to administer than for other categories of licensing. The municipality can charge different fees for different categories, provided in total they are not more than cost recovery and for the categories not more than cost recovery. For those kinds which require inspections and heavy expenses, there can be a higher licence fee than for those kinds which are just routine.

Mr. McLean: But they would pass their bylaws.

Mr. Rotenberg: They would pass their bylaws. They can choose their system, either the \$10 and \$25 system, which is the simple system, or the cost-recovery system. If they choose the cost-recovery system, different categories of licences can have different fees, providing the category and the total do not violate the principle.

Mr. McLean: They would determine in their bylaw which category they want to be under.

Mr. Rotenberg: But Mr. Breaugh's point is that there are two exceptions to that in this act: the taxicabs and adult

entertainment parlours, where they can pierce the ceiling of cost recovery.

Mr. Breaugh: Let me ask the parliamentary assistant a question then. Where did you get the numbers \$10 and \$25?

Mr. Rotenberg: Pretty arbitrarily. In the present Municipal Act a number of sections allow a fee for licensing and a number of sections are open. I guess it is just a feeling among our ministry that for a routine licence where you just walk in, fill out a form and get a licence, if there is any number of them \$10 is a reasonable amount, and \$25 is a reasonable amount for those for which there is some kind of test required. This was done somewhat in consultation with municipal officials as well. It is a reasonably arbitrary number.

Mr. Breaugh: That is my problem. How come you are allowed to be arbitrary and yet you are saying to the municipalities: "If you want to go to a cost-recovery basis, you have got to be accountable. You have to give us some rationale for setting the fee at \$50 or \$60"?

If I look at the \$10 and \$25 thing, it really says that if you have to do some kind of inspection process you can charge another \$15. I do not know what you can expect in the way of an inspection process for 15 bucks. You could not put a junior clerk out on the road and anticipate that the municipality was going to recover its cost for \$15. I do not think you can do that.

If you rolled in a little bit of overhead, some travel costs, staff time, some paperwork and little bit of processing, I suspect you could not get a two-word inspection process for \$15--even if they went on a bicycle. So it seems a bit nuts. Why don't you just go for one principle of cost recovery, elaborate somewhat on what you mean by that, let that be the fee and let the municipalities out there come as close as they can to that mark? If they are out of line, you have the power under the bill to roll it back. Why wouldn't you just take one fair principle and apply it?

Mr. Rotenberger: Because, Mr. Breaugh, some municipalities have indicated to us that they would like to be able to charge just a nominal fee and not go into the cost-recovery system. If we believe in no more than cost recovery and some municipalities feel they want to charge just a nominal fee for licensing, we feel they should be allowed to do that. It is their option. We should not be telling them they must go into the cost-recovery business.

Mr. Breaugh: But isn't it just a bit dumb and also a bit unfair that for some levels of business, never mind recovery costs--I thought all these guys were free enterprisers out there and believed there was no such thing as a free lunch, and that they also believed very strongly that governments should not be subsidizing business, that that was an evil thing to do.

Why are we setting up a classification system here which obviously subsidizes some and goes to others and says, "Yes, but

because you run a different kind of business, or because your council wants to go to a cost-recovery basis, you do not get any breaks on it"? Why this massive subsidy of the private sector? If it costs \$16.95 to process a licence fee, why not charge \$16.95?

Mr. Rotenberg: Mr. Breaugh, there is no reason. The municipality has the option to do that if it so desires, but the municipality also has the option, if it does not want cost recovery--a lot of municipalities do not do it as cost recovery--it has the option, if it wants, of just charging a nominal fee.

Mr. Breaugh: You are certainly encouraging some kind of gravy-train approach here.

Mr. MacQuarrie: Mr. Chairman, in departing somewhat from the cost-recovery base of calculating licenses, why has Bill 11 departed from the principle that Mr. Oakes referred to, that certain types of licensing, by virtue of subsection 92(7) or 92(9)--I forget which one it is--of the British North America Act, do allow municipalities to use licenses in the form of tax as a revenue producer?

Why is the bill forgetting that sort of thing and the category of businesses that it covered? I think there were a number of business enterprises. I can see it particularly with respect to tradesmen, vendors of goods and merchandise who come in in direct competition with people who are already paying business tax.

The classic case, I think, was the Montreal abattoir case where the city of Montreal established that the municipal licence fee in that case was a form of taxation and a direct revenue producer. It was a high fee, as I recall.

11 a.m.

Mr. Oakes referred to that, and I would like to get the ministry's rationale for sort of putting that form of licensing aside and going ahead with the nominal fee. The nominal-fee base is when we are passing bylaws for the health, safety and welfare of the community at large, as opposed to revenue producing by way of tax.

Mr. Breaugh: Kind of like an Ontario hospital insurance plan fee.

Mr. Rotenberg: Mr. Chairman, I think the BNA Act is permissive in allowing the provinces to use licensing as a revenue-raising source. We do not feel, with our businessmen being taxed with income tax, corporation tax, business tax and property tax and who knows what else, that licensing is a proper way for a municipality to raise revenue, as distinguished from just using licence control.

You will recall that the other day, and I cannot remember which delegation was here, we were talking about itinerant salesmen, people coming in and out, hawkers and pedlars. There is

a section in the Municipal Act which deals with some of those people where the fee is higher than the nominal fee. As I indicated the other day, that section of the Municipal Act is remaining in the Municipal Act, so that for those who come in just very briefly to the municipality and do not pay business tax, the municipality can charge a licence fee in lieu of business tax.

I think I indicated the other day we are possibly considering extending that to hawkers and pedlars, so that for those who do not pay business tax they can use that as tax, but we do not feel the normal business person who pays all his tax in a community should be hit with another tax.

Mr. MacQuarrie: Let us look at taxis as an example. Here again I guess it is another perspective of the problem that was raised earlier by Mr. Oakes. In a regional setting where you have one major urban centre, a lot of suburban municipalities and regional licensing, the fear is that the taxis, with the region setting the fee, concentrate where the traffic generators are or where the bulk of the population is, and that the suburban municipalities suffer through lack of service.

In the present situation, in some regions you have the dominant municipality, which is heavily urbanized, having (a) a restricted number of taxicabs, and (b) a very, very high licence fee which tends to make the licence fairly expensive and to be a source of revenue. The suburban municipality is saying, "Look, in order for us to get some sort of taxi service out here, we have to licence at a considerably lower rate."

There is danger in going to a broader scope. I can see it, for instance, in a municipality like York, where you do not have an extremely large focus of population, which might make regional licensing workable and possibly desirable. In other regions where you have one major focus with substantial traffic generators and a lot of residential subdivisions, you know that the taxicabs are all downtown.

Mr. Rotenberg: Mr. MacQuarrie, we have not changed the authority for licensing taxis in this bill from the present situation. My understanding is that the only regions that are now licensing taxis are Metro and Waterloo.

The taxi industry is not changing from the present legislation where municipalities can charge higher fees. In the Ottawa region, for instance, the city of Ottawa may charge a higher fee than Nepean or Kanata or somewhere else, which is probably what happens now. That is not being changed under Bill 11.

Mr. MacQuarrie: I was raising it as another perspective on whether they should have regional--as Mr. Oakes had suggested, in York it might be desirable to go to a broader scope in terms of taxis.

Mr. Rotenberg: We are not planning to extend taxis to any regional jurisdiction. If somebody asked for it, then we would look at it; but in this bill we are not making any change in that jurisdiction.

Mr. Brandt: I wonder if Mr. Gillespie or Mr. Oakes could comment on what will happen to the gross fees of a municipality once Bill 11 comes into effect, if it is intact as it is now. Will the gross revenue of the municipality go up or down? And could you give us some indication of what that revenue is at the moment so that we could perhaps get a fix on it from a per capita basis?

I am trying to get at Mr. Breaugh's earlier question to see how significant these fees are as a percentage of the total budget and what the impact of Bill 11 will be in terms of either increasing or decreasing the total revenue.

Mr. Gillespie: Mr. Chairman, the revenue to Sarnia from these types of licences last year was about \$40,000. The clerk estimates that, going on the 10-25 basis, in the coming year it will be of the order of \$6,000 to \$7,000.

Mr. Breaugh: More? Or is that the total?

Mr. Gillespie: Total.

Mr. Rotenberg: And on the cost recovery basis?

Mr. Gillespie: On the cost recovery basis, it would be another \$1,000 over that; so they were making about \$30,000 on it.

Mr. Brandt: Mr. Oakes, could I address the same question to you to see if there is any consistency in that kind of result?

Mr. Oakes: I suppose the short answer is that municipalities that were using it as a source of revenue, as Sarnia was, are going to lose that source of revenue and will have to increase the property tax. Municipalities that were not using it as a source of revenue will not be affected.

Mr. Brandt: I would think, Mr. Gillespie, that the municipality would be hard-pressed, again following the direction of Mr. Breaugh's comments, even to recover its costs on a gross revenue of \$6,000 to \$7,000 for the number of licences that are issued at the moment. That is a very insignificant amount of money in a \$30-million-plus budget.

Mr. Gillespie: In a community the size of Sarnia, the clerk's office requires a certain minimum number of staff just to operate and carry out the statutory functions of a clerk's office. The way it works in Sarnia is that, in addition to their other duties, the clerk's staff carry out the licensing function. Whether licensing were a municipal responsibility or not, the clerk would still require to have this certain minimum number of staff. For Sarnia, the licensing function has, in effect, been a way of offsetting operational costs, because staff have to be there anyway.

Mr. Brandt: Mr. Rotenberg, can that not be built into the recovery formula so that a municipality can legitimately justify recovering some of those costs, administrative or whatever?

Mr. Rotenberg: My reading of the bill, Mr. Brandt, is that cost recovery means cost recovery. In other words, if there is so much of the time of the clerk's staff in administering and issuing the licences and so on, that is part of the costs and that is something we can build into their fees.

Mr. Brandt: Effectively, they could then get back up again to \$40,000--not with the intent of making profit, but with the intent of recovering their actual costs as they relate to the function of the clerk's office in its totality?

Mr. Rotenberg: The municipal treasurer or the municipal auditor, I think, would be able to justify certain costs. That is what the philosophy of the bill is. If they can justify their costs and say so much time of this clerk and so much time of that clerk on a cost accounting basis is in the licensing function--and they do not have to do it very often--then that is part of the administrative costs. You do not have to say there is just one person who issues licences; rent, overhead and all that sort of stuff is part of the licensing fee. The licensing cost could be built into the fees.

Mr. MacQuarrie: Mr. Oakes in his presentation had presented the (inaudible) so that a municipality, when it was preparing its estimates and its budget for the year could budget a certain amount and, on the basis of that budget, make an allocation or determination of licence fees to be charged.

Mr. Rotenberg: That is our anticipation of how it would happen, yes.

11:10 a.m.

Mr. MacDonald: The \$1,000 extra that you thought would come in with cost recovery in addition to the actual licensing surely is a very restricted concept of cost recovery. It would not take into account any of the personnel involved?

Mr. Gillespie: What the clerk did was a rough calculation, taking an apportionment of the time involved by the staff and applying it to issuing licences. He found that in his operation it came to about \$8,000 perhaps.

Mr. Rotenberg: Did he include rent, overhead, paper and all that sort of stuff?

Mr. Gillespie: I cannot be certain if he took that into account.

Mr. Rotenberg: He may do it. It may be that some municipalities may take in less money because they are not making a profit on licensing.

Mr. MacQuarrie: I would feel, in the light of some experience I have had, that however you cut it, it will still be a money-maker.

Mr. Oakes: The one other difficulty I see in this is that you meet unanticipated expenses. For example, I think two years ago, in the latter part of the year, Whitchurch got into a court procedure over a video game arcade and it cost them \$12,000. In a small municipality such as that, that is a very significant expenditure.

What are you supposed to do with that? You are bumping up the fees and lowering them every year like a yo-yo. To me, that is a very undesirable feature of this bill.

Mr. Brandt: I want to pursue this business of fees in a slightly different direction for a moment. We heard earlier testimony and submissions to the effect that Bill 11 will open up the possibility of a municipality going out and licensing a whole flock of new operations that are not covered under the existing umbrella of the legislation we are working with at the moment.

In terms of the total number of licences that would be available to the municipality, in Sarnia or York region we are speaking of here, how many of the total are currently licensed? Do you license all of them or a percentage of them? Are there some you simply ignore and prefer not to license? Could you give us some general overview of that?

I ask the question to get on the record the municipality's position as it stands now relative to licensing, because we have heard from a number of speakers who are concerned that you are simply going to go out and raise a lot of new revenues. We have already heard that revenues in your case will drop. What is going to happen with respect to new businesses that potentially will be licensed as a result of Bill 11 becoming law?

Mr. Gillespie: Under the present legislation, I think there are, in rough numbers, about 60-odd categories that will be repealed by Bill 11, many of which contain groups of related businesses. Out of these 60-odd groupings, Sarnia currently licenses either 33 or 35 trades or callings; so we only go to about half of what is currently permitted in terms of the licensing function itself. On that basis, I submit that Sarnia is not likely to go overboard, as you put it.

Mr. Brandt: Could I hear from your municipality on that, Mr. Oakes?

Mr. Oakes: I think you will find that this is going to vary greatly from municipality to municipality. In Metropolitan Toronto, I know from when I was there, they got everything. Other municipalities would get hardly anything. I do not think that is going to change. I think you will still find a great variation in practice from one area to another.

Metro or the city probably has a committee set up right now. I do not know this, but my guess is they probably have a committee set up right now to investigate and report on additional businesses they can license. In other places, as Mr. Gillespie says, they are not even licensing all they are permitted to do at

the present time and they likely will not go overboard or do anything more than they are doing now. I doubt very much if you are going to see much alteration really, except in Metro.

Mr. Brandt: If there is a problem with revenue, as there always is with government, and you have the opportunity to go out and license another 25 businesses roughly, based on the numbers you have given us, what is holding the municipality back from going out and licensing those businesses?

Why have they arbitrarily decided that some should be licensed and others should not? Who makes that decision? Obviously the council does at some point, but do you have any idea why the decision was made not to license in the case of 20 or 25 businesses?

Mr. McLean: It depends on the leadership of the mayor.

Mr. Gillespie: Generally, in my time with them, the only new category that has come along has been the body-rub and adult entertainment parlours. When Metro got into the act of licensing body-rub parlours, Sarnia and a number of others jumped on the bandwagon too.

I think the various licensing provisions in municipalities have come along in reaction to problems that have come up from time to time, such as the body-rub parlour business, and it has been like Topsy; it just kind of grew over the ages.

In response to Mr. Brandt's sort of suggestion, it may very well be the case that cities like Sarnia, if they are tied to the 10-25 or justify-your-cost basis, may very well go out and license everything conceivably possible to bring in every extra \$10 they can lay their hands on. It would seem to push them in that direction.

Mr. Brandt: Mr. Rotenberg, in regard to this business of justifying your costs, who is going to audit the books of the municipality and sit there and make the determination as to whether or not those costs are justifiable? How is that going to be handled?

I can tell you that from a municipal standpoint, and I am somewhat sympathetic to what Mr. Breagh was saying earlier, if there is one thing that bothers a municipality, it is being given a portion of the responsibility and then have certain very restrictive guidelines that perhaps in some instances cost more to enforce, to administer and to audit and you have legions of people going around the country shuffling papers to make sure that you have in fact crossed the t's and dotted the i's.

I find that a very nonproductive, useless exercise. If we can possibly avoid it, I would like to avoid it. I am making certain provocative suggestions, of course, in my preamble. But I think there is some value in looking at that if the audit procedure is going to cost a lot of money.

Mr. Rotenberg: Every municipality has a financial

reporting to the provincial government every year. There is a form that is set out and regulations as to how to report to the provincial government.

In the case of most municipalities, but not all, most of their stuff is on computer. I would assume that within that financial reporting there would be some reporting on the total cost of administering licences and total revenue from licences; they would just be two numbers in there. It would be the initial stage anyway. As with so many other situations, it is up to the treasurer and the auditor in a municipality to report their financial situation.

I imagine, as is done now--the provincial government does do certain spot checks on municipal reporting--there would be some checking here of those reports. But really the responsibility to conform to the law is the responsibility of the municipality and we would assume, in the absence of other information, that municipalities would conform to the provincial legislation; between their auditor and the treasurer and whoever else, they will set their fees in accordance with this legislation and it will be their responsibility to so do.

Mr. MacQuarrie: On the question of deficits, you are restricting the amount recoverable by licence fees to the expenses in that year. But if a municipality, as in the case of Stouffville, incurred a substantial deficit in its licensing, enforcement and administration in one year, why couldn't it carry that forward, or at least adjust the licence fees in the following year?

Mr. Rotenberg: I think as the legislation is written now, they would not be able to.

Mr. MacQuarrie: That's right.

Mr. Rotenberg: The point of the legislation, as with everything else, is that this is your administrative costs in your normal situation. As in any other municipality, if you take somebody to court for violation of building or zoning bylaws, or whatever, those extraordinary fees--and enforcement, from that point of view, probably should be coming under the general tax rate and not out of the licensing fees. Why should all the licensees pay for an enforcement for one particular case? You have building permit fees and if someone violates the law, you take him to court.

Mr. MacQuarrie: So if you are budgeting or calculating the costs of licensing, you eliminate the cost of enforcement?

Mr. Rotenberg: I would think you wouldn't have the cost of extraordinary enforcement. That should be coming, I think, under the general tax rate. But, Mr. Chairman, when we get into clause-by-clause, I imagine the members of the committee and the staff will be discussing that then.

11:20 a.m.

I do not mind answering the questions now, but we do have another deputation. It is up to you, Mr. Chairman, whether you want me to get into all that now or when we get to clause by clause.

Mr. Brandt: I have one final question that may be unique to the Sarnia area, but I doubt it.

In the case of licensing of taxis, which is a function of the police commission at the moment, what is the position of the adjacent township relative to taxis that are licensed in Sarnia moving into their municipality? Do they have any separate licensing or conflicting regulations that have come to your attention, Mr. Gillespie?

Mr. Gillespie: To the best of my knowledge, the surrounding townships do not license taxis, they just ignore them.

Mr. Brandt: The same situation that exists in York would be the case between Sarnia and Sarnia township and perhaps Point Edward as well. If they decided to license taxis in their municipalities, they could come up with different rates, licences and fees. They have just made the determination at the moment to not license, which simplifies it.

The township of Sarnia has a population of 20,000 plus and, if it decided to do that, it could cause some difficulty along the lines of what is being suggested in York.

Mr. Gillespie: Yes, that is certainly possible.

Mr. Chairman: There are no other questions.

Thank you very much, Mr. Oakes and Mr. Gillespie. The third group are from the Independent Cab Owners Co-operative, Inc. Mr. Bend and Mr. Sneddon, are you both here?

Mr. Bend: Yes.

Mr. Chairman: Do you want to come forward to those chairs at the end?

Mr. Rotenberg: Mr. Chairman, while the gentlemen are sitting down, I think it should be pointed out to the committee that we have several other groups coming in tomorrow with the same problems, a number of taxi organizations in Metropolitan Toronto.

Mr. Chairman: Which of you is Mr. Bend?

Mr. Bend: I am the president of the Independent Cab Owners Co-operative, Inc.

Mr. Sneddon: I am the vice-president, T. Sneddon.

Mr. Bend: I want to thank you for the opportunity to speak on behalf of our organization. What I have to say is old hat but every time I get an opportunity, I like to put my right foot forward and tell of the unhappy situation we have in Toronto.

We have been very unhappy ever since the government created Bill 195, allowing out-of-town cabs with airport plates to come in and pick up our fares in the city, illegally, we feel. The problem in Metro Toronto was created by the Conservative government when it established the licensing commission, took that function away from the police department and said, "The commission is looking after all the licensing of cabs in this fair city." It is not fair any more. We are having a bit of a problem.

Again I say this is old hat to some of the people here, but I hope I can convey my unhappiness to the rest of the people here.

What I want is for the licensing of cabs in the city to be strictly with Metropolitan Toronto. Cabs from outside the city come into Toronto from all over southern Ontario, and I do not think it is quite fair. We are reaching a position here where the market is dwindling all the time. All the cab drivers who are licensed by Metropolitan Toronto are getting very unhappy about the situation, which is becoming worse all the time.

It is only fair to tell you that the former minister, Mr. Bennett, who created Bill 195, was saying that cabs come into the city from the airport and should have a right not to be empty going back. We have the same situation. We go to the airport and we come back empty.

The statement that came out is ludicrous. However, Mr. Bennett did consider this at one time. We came down here to these very parliament buildings. We spoke of our situation and he was in favour and said it was a bad situation. Unfortunately, the ministers were changed, as happens in government. The decision made by the minister, Mr. Bennett, was thrown right out the window.

Mr. Rotenberg: Mr. Wells was the original minister, not Mr. Bennett.

Mr. Bend: Pardon me, Mr. Wells. You are quite right. I am getting the names confused. I get so riled up with this business. I have all this on my shoulders. Our cab drivers are coming to me continually, whether or not they belong to our organization, wondering when this situation is going to be rectified.

There has been no relief from the government to this point. I am speaking from the bottom of my heart when I say I don't think this is a fair situation. I hope I have exposed a very sore point. I hope it does not fester, because there is a problem here. It is not quite right.

I hope people here will reconsider what this bill has done to our industry and how it has hurt the cab drivers financially when they see the taxis coming in. They are even picking up illegally and delivering in the city. There is no way of policing them. There is no way of enforcing against this horrible situation.

I hope I have made it clear exactly how we stand. In your wisdom, I hope you will rectify all this. I want to thank you very

much for being able to speak here. If there are any questions, I will be glad to answer them.

Mr. McLean: Perhaps Mr. Bend can clear up a few things in my mind. If I came in on a flight from Florida, or anywhere, would I be allowed to have a taxi from Orillia come to pick me up?

Mr. Bend: From Orillia? You wouldn't be able to have a taxi per se pick you up. You could have a taxi that is licensed by the airport and comes from Orillia, or whatever city you are considering, but you couldn't even take that taxi from Orillia because you would have to take the first taxi in line. Whatever taxi is there is the taxi you take. It might be from anywhere in southern Ontario.

Mr. Rotenberg: Excuse me. If you had prearranged for the taxi to come from Orillia, the airport rules allow that, by prearrangement, it can come and pick you up. But it must be by prearrangement, if it does not have an airport plate. Otherwise, you must take the airport plate cab that is first in line.

Mr. McLean: Okay. What I observe then is only taxis licensed for the airport are allowed there.

Mr. Bend: Exactly.

Mr. McLean: If they come to Toronto, are they allowed to pick up passengers to take back to the airport?

Mr. Bend: The way Bill 195 is written, if they have an airport licence, they can come and pick up indiscriminately anywhere in Metropolitan Toronto. Unfortunately, our licensing commission inspectors can't do a blessed thing about it. As I was saying, they are not allowed to pick up to deliver in Toronto. But who is to know what they are doing when they pick up a fare?

Mr. McLean: If I got a ride to the airport in your cab, are you allowed to pick up anybody at the airport and bring them back?

Mr. Bend: No, I am not. And we are not looking for that. We are not concerned about that. The consensus of opinion in Metropolitan Toronto among all the cab drivers is that they just want what is coming to them. At one time we were concerned about what was going on at the airport, because we felt that any cab should be entitled to go and pick up there. However, that is not our concern today. Our concern today is the business that remains.

Oakville has the same situation. The cab drivers there sent me a letter, asking me to speak on their behalf too. They are very unhappy about it, when they have cabs coming in that are not licensed by Oakville. They are coming in and indiscriminately picking up fares. The cab drivers who are waiting in line or taking the rotten runs are just standing by and watching.

Mr. McLean: Do you have a recommendation for us on how you would like to see it done?

Mr. Bend: We have been saying this for a long time. It is not only me, but the rest of the industry. You are going to hear deputations tomorrow. Unfortunately, I am not with them. I had to come up today. I had to get sneaked in here somehow or other. I felt I had to say my two cents' worth.

Limousines are coming in. They are a thorn in our side too, but we can live with so much. We can live with the limousines that come in, which are chauffeured Cadillac cars. If somebody wants a little better car and a man dressed up to salute to them, fine. We are not against that.

What bothers us is that a cab that can come in from outside--he has just dropped off a fare, had a lucrative fare into this city--and now he can take our lucrative fare that really belongs to me, to Tom and to the rest of the people who are involved in the cab industry, and is just laughing at us, and they are sticking out their tongues at us in Archie Bunker fashion. This bothers me no end; I have to drive somebody for a dollar and change and then this fellow comes in after he has brought a fare in here and he goes and drives off with a good fare.

11:30 a.m.

Mr. McLean: Do they pay extra for a licence to be on the airport run?

Mr. Bend: They do.

Mr. McLean: How much extra?

Mr. Bend: I think it is \$850, plus the expenses of operating out of the airport. Good luck to them. If they want to do it and that is their cup of tea, fine. I am not interested. I have got one licence for Metropolitan Toronto. That is all I am concerned about and I do not want anybody to take away what I am paying for with a licence--somebody coming in here and taking my bread and butter out of here.

Mr. Rotenberg: Mr. Chairman, just for the benefit of the committee members, this is something that I have been very much into in the last year or so. Until about 1978, there was no restriction on taxis that were licensed outside of Metropolitan Toronto picking up a fare in Metropolitan Toronto and taking it out. For example, at Town and Country Square shopping centre at Steeles and Yonge, if you are familiar with that, the Markham cabs and Richmond Hill cabs would come into Metro and take a fare back to their locations.

At that time we passed what is called point of pick-up legislation; that is, a taxicab cannot pick up a fare anywhere except within a municipality in which it is licensed. In other words, within Metropolitan Toronto, only Metro cabs can pick up, in Richmond Hill, only Richmond Hill cabs can pick up and in Mississauga, only Mississauga cabs can pick up.

But once you pick up a fare, you can go wherever that fare wants you to go; it could be as far as Miami or just across a

municipal boundary. But once you go across a municipal boundary, the municipality where you take the fare may pass a bylaw which restricts you from picking up a fare in that municipality. In other words, only taxis which are licensed within the municipality can pick up a fare in that municipality.

The exemption that was made to that was taxis with airport plates and this is where the whole bone of contention is. It is not a simple problem and we have been wrestling with it. There are some 300 taxis which have airport plates. For whatever reason, about 150 of those are Mississauga licensed, only about 69 are Metro licensed and the balance are from other municipalities, Markham and so on, and there is even one from Fenelon Falls.

The rule up until now has been that a cab which has an airport plate can pick up in any municipality, whether licensed in that municipality or not, only to go back to the airport. This is the main bone of contention. It is a complaint of the whole taxi industry.

I would disagree with the deputation that Metro is not enforcing its bylaws otherwise, because if a cab with an airport plate, let us say, picks up a fare on the street and takes it somewhere else, say picks it up at the Royal York Hotel and takes it up to the Inn on the Park, or something, there is reasonable enforcement in that. You cannot enforce them all but, with respect, I think there is quite a good enforcement in that. But the bone of contention is that the 200-odd cabs that have airport plates will pick up within Metropolitan Toronto and take the fare back to the airport.

Mr. McLean: Do they have a licence for Metro as well?

Mr. Rotenberg: No, they do not have a Metro licence; they do not have to have a Metro licence. What the Metro cab industry--you will hear it today and you will hear it again tomorrow--is asking us is to take out that exemption, which is on page 11, the bylaw clause and the new licensing clause 4(3)(c).

If you can read through the verbiage there it says that a municipality may pass a bylaw prohibiting anybody other than their licensees from picking up in the municipality except a fare that is going to the airport.

There are considerable problems with the airport in the whole jurisdiction and, as you see, we had a demonstration several months ago from the Metro cabbies who were unhappy about this. We, in the ministry, have been wrestling with this problem to try and come up with an equitable solution both from the point of view of Metro cabbies and also the out-of-town taxi cabs who are now into this business. I am pleased that this bill is here and that the industry is coming forward so all committee members will be able to get a feeling of what the problem is.

Mr. McLean: Are other large airports under the jurisdiction of the Department of Transport Act?

Mr. Rotenberg: Yes.

Mr. McLean: Does an airport in Ottawa have the same licensing, the same structure as--

Mr. Rotenberg: Each airport has a slightly different structure.

Mr. MacQuarrie: They go to (inaudible) taxi companies in the Metropolitan area bid on them, get the contract awarded for the (inaudible). Then their cabs are the only ones that can take passengers from the airport, although any cab can go into an airport.

Mr. Rotenberg: The airport regulations are these. There are two kinds. There are limousines which are licensed as limousines that do not have any taxi plate, although Mississauga are now trying license them. They are on airport runs only. They do not have a meter, they do not have a sign or anything like that. They are the limousines. There are about 300 or 200 of those.

Then there are airport cabs which have the Department of Transport plate, this year it is a red plate, as well as their licensed taxicab plate. They can come into the airport. They are in different lines than limousines and they will go anywhere and they are allowed to pick up fares in any municipality to take back to the airport.

A number of years ago there were limousines only at the airport. Limousines had a monopoly and, for those of you who may remember, there was quite a fuss about that. For a while, the Department of Transport threw the airport wide open and I think there was quite a bit of chaos. Part of the problem was that if a taxi got into a line and someone said "Take me to Bristol Place," they would not do it because after waiting in line for an hour and a half they were not going to take a \$2 fare. These people wanted the \$20 fare.

So the federal government, in its wisdom, brought in this system which, with all respect to the feds, I think also has a certain amount of built-in problems to it. As a provincial government, part of our problem is we are somewhat constrained by the regulations that the federal government has brought in. We have had one meeting with the airport people and as a result of these hearings and what we have gone through, we hope to have other meetings with the airport people, and possibly even with the federal ministry.

My understanding is that the federal government, under Jesse Flis, who is a local member, has a task force which is now looking into part of the airport problem, at least the limousine problem at the airport which also is creating some problems. I would say to the members of the committee, I am pleased this is going to come up because we want to get a broad-- A lot of members of the Legislature are aware of the problem, and we would like to get advice from the members of the Legislature. It is not an easy problem to solve.

Mr. MacQuarrie: I know the Ottawa contract is fairly

rigid and there are fairly strict guidelines laid down for the successful kind of (inaudible) passengers from the airport in terms of any of a number of aspects. What the Department of Transport is trying to ensure is that people using the airport are handled well and expeditiously and make sure that there are always cars on hand when a flight comes in. Sometimes they ran into the problem in the older days, that when a plane would come in there would be no cars there.

Mr. McLean: Mr. Chairman, what I would like to (inaudible) to the parliamentary assistant the Department of Transport has a lot of jurisdiction over what happens at the airport with regard to the taxicabs.

Mr. Rotenberg: They have total jurisdiction of what happens within the federal government property, but also we have jurisdiction to give the municipalities jurisdiction on what happens as soon as the taxicab leaves airport property and goes into Mississauga or Toronto or anywhere else. There are competing or conflicting jurisdictions and--

Mr. MacQuarrie: They also have jurisdiction over railway stations and in some areas they choose to exercise it.

Mr. Chairman: Mr. Bend, do you want to make a comment?

Mr. Bend: Yes, through the chair, I would like to address Mr. Rotenberg. I know that you did not have anything to do with Bill 195. That was a creation that came about possibly before your time or you were not involved with it.

At one time, the bylaws in Metropolitan Toronto were very vague. Our licensing inspectors had a big problem trying to straighten out some of the problems that arose when other town cabs came in to pick up in Toronto. We called them bandit cabs and they were coming into Toronto picking up, so that the hands of the licensing commission were tied. We requested and the licensing commission requested that the bylaws be more rigid for the summoning of out-of-town cabs or bandit cabs that were picking up in the city of Toronto.

We did not ask that cabs coming from outside the municipality with an airport cab licence be able to come into the city to pick up. One thing had nothing to do with the other. You are comparing oranges and bananas again. Where does the airport licence plate have anything to do with cabs coming in and picking up where the hands of the licensing inspectors were tied? We are not concerned about the airport. Let the federal government break their heads with the airport. We have nothing to do with it. There is no jurisdiction from the Ontario government over the airport.

11:40 a.m.

What we are concerned about and what is bothering us is the business of airport cabs coming in and taking away the business that is rightfully ours. This is the problem and this is what we are assessing right now.

Mr. Breaugh: As I understand it, you are asking for the removal of the exemption so that a cab that is licensed in Metropolitan Toronto is the only cab that can function within Metro.

Mr. Bend: Exactly. That is right, sir.

Mr. Breaugh: Mr. Rotenberg, you will call it simple but it strikes me as rather logical that if you are going to run a cab in Metropolitan Toronto that you have a Metro Toronto cab licence. If you do not have one of those, you cannot operate a cab within this jurisdiction.

Setting aside the airport as being a kind of no man's land out there, what is wrong with that? What are the complications?

Mr. Rotenberg: One of the complications has been in the energy saving field, being that cabs which come into downtown Toronto are going to have to go back empty and there would be a considerable energy loss as far as deadheading one way is concerned. All cabs which operate out of the airport and bring fares into Toronto would deadhead back the other way.

Mr. Breaugh: There seems a very logical answer to that; they do not do it.

Mr. Rotenberg: Do not do what?

Mr. Breaugh: They do not bring fares into Toronto. I mean if it is a Mississauga cab, it seems fairly logical that they operate back and forth between the airport and Mississauga or if it is Oshawa, they would go between Oshawa and the airport. What the hell are they doing in downtown Toronto?

Mr. Rotenberg: There is nothing in any rules preventing a taxicab at the airport from taking a fare to wherever they want to go. It is the same if you pick up a Toronto cab at the Royal York Hotel and you want to go to Mississauga; that cab can take you to your destination. It is the point of pickup which is the jurisdiction that restricts the taxi from where it is going.

One of the problems, which is beyond their jurisdiction, is there are an awful lot of Mississauga cabs licensed at the airport and not very many Metro cabs licensed at airport, which is a story in itself. But as for the cab at the airport which is in the line waiting for a fare, wherever that fare wants to go--be it Metropolitan Toronto, Oshawa, Mississauga, North Bay or wherever--that cab legally takes the fare and there is no complaint by anyone about the fare originating at the airport.

Mr. Breaugh: I do not have any argument with that.

Mr. Rotenberg: The question is, when that cab brings you down to the Royal York Hotel, Parliament Buildings or wherever in Metropolitan Toronto, does that cab have to deadhead back to the airport empty in order to take another fare, wherever his next fare in line wants to go?

Mr. Breagh: My only problem in that is what licence has that cab got to operate from downtown Toronto to anywhere? It strikes me he has none, except you have given him an exemption which allows him to do that.

Mr. Rotenberg: I am giving you the philosophy. I am not saying I necessarily agree with it or we may not agree with it. The airport is considered to be a different kind of situation to normal taxi runs. They have the special airport plate, which the federal government has issued to them.

Mr. Breagh: Right, I got that.

Mr. Rotenberg: It has been up to now that they should be a back-and-forth airport service and they should be able to run back to the airport but not anywhere else, if they pick up in Metropolitan Toronto, Oshawa, Mississauga or wherever.

Mr. Breagh: I appreciate that. The point that they are making here though is that if they have applied for a licence to operate a cab in Metropolitan Toronto, it seems to me that ought to give the cab company the right to be in Metro Toronto. I do not understand the reason behind giving somebody who has an airport plate the right to kind of cross all of these jurisdictions.

I do not have any difficulty with them picking somebody up at the airport and delivering them wherever they want to. But if these guys have applied for a licence and follow all the bylaws, tariffs and all of that under the guise that they have a licence to operate a taxi cab in Metropolitan Toronto, that has to be worth something. It strikes me that you are creating problems by allowing somebody else to kind of override their turf, so to speak.

Simplistic or not, it also seems logical to me that the licence means they are the cab industry in Metro, and people from outside do not have a Metro licence and so cannot function in Metro. I do not see that this is unfair and I am not sure it is a great energy waste. As a matter of fact, maybe if you remove that exemption you might find them of their own volition saying: "The one-way trip is not worthwhile and we will not do that any more. We will let somebody else take that business."

Is that too logical and too simple?

Mr. Rotenberg: This is what has been the contention of the taxi industry in Metropolitan Toronto and this is what the ministry is looking at.

Mr. Breithaupt: Just to make sure I understand this, Mr. Chairman, the situation is that a cab with an airport licence and the Metro licence can cover the whole situation, in effect, within Metro Toronto. A cab with a Mississauga plate and an airport plate which, as you say, is the largest proportion serving the airport, has the benefit of doing normal tax business in Mississauga but if it happens to deliver an airport fare to the Royal York it can take a fare back to the airport.

Mr. McLean: Legally?

Mr. Rotenberg: Legally. That is correct.

Mr. Breithaupt: The presumption here, as I understand it, is that under this sort of overriding federal airport item they are able to deal almost like an umbrella but just for the purposes of the airport.

Mr. Bend: But the federal government did not give them that permission. It is the Ontario government that gave them that permission.

The federal government gave them the permission to take out of the airport and to deliver anywhere in Ontario. We can go to Oakville. We can go anywhere. We deliver all over. We come back empty. We cannot pick up in Oakville. We cannot pick up in Mississauga. If a city plate cab which has a Metro licence delivers somebody in Mississauga, it cannot pick up in Mississauga.

Mr. Breithaupt: So what you are telling me then--

Mr. Bend: There are laws for one and no laws for the other.

Mr. Breithaupt: Just so I make sure I have this right, with a Mississauga plate and an airport plate, this opportunity of returning a passenger from the Royal York is not a result of the airport authority?

Mr. Bend: That is right.

Mr. Breithaupt: I see. Thank you.

Mr. Rotenberg: Not necessarily. It gets more complicated, Mr. Breithaupt, because--

Mr. Breithaupt: How could it?

Mr. Epp: David will do it!

Mr. Breithaupt: Let me see if I can muddy the waters for you.

Mr. Rotenberg: When the federal government issued the airport plates on some sort of first-come, first-served basis, some enterprising taxi people from Markham applied for plates. There are about 50-odd Markham plates. People were licensing in Markham, which is much cheaper than in Metro Toronto, and they run Air Flight or Air Cab--I cannot remember which service it is--and these people in effect run back and forth between Metropolitan Toronto and the airport and they are pretty well exclusively airport cabs.

Mr. Breithaupt: They are really not servicing Markham.

Mr. Rotenberg: Not in general. I do not think these cabs see Markham from morning to night at any time. But the 150-odd Mississauga cabs which have airport plates and also operate under Air Flight or Air Cab or whatever, really serve only the airport

run. They do not serve Mississauga as such. As a matter of fact, Mississauga increased the number of taxi plates because the number they had was not enough because those who got airport plates are no longer serving Mississauga.

In effect, what you have is a group of about 230 taxicabs, excluding the 70-odd cabs which have Metro plates and airport plates--that is 70 of the 2,000-odd Metro cabs--you have about 230 taxis which are really exclusively airport taxis and run only from the airport to wherever and back, be it Metropolitan Toronto or Richmond Hill or Mississauga or wherever.

Mr. Breithaupt: Sometimes picking up and sometimes--

Mr. Rotenberg: Who do both; mostly two-way fares.

Mr. MacQuarrie: Most of their pickups though are from--

Mr. Rotenberg: Most of their pickups are pre-arranged or they do some at hotels, which does cause a concern. There are alleged certain deals with certain hotel doormen where they do not take the next cab in line but then tend to be pre-arranged. So these 230-odd taxi cabs are really exclusively airport cabs.

If you look in the Yellow Pages you will see, under Air Limousines or whatever, three or four companies registered, most of whom are so-called taxicabs because they have a roof light and they have a meter, but they never use their meter; they are all flat fare. They use their airport plate to come to and fro, whether they are licensed in Mississauga or Markham, which are the main ones, or the one licensed in Fenelon Falls, and there are a few licensed in Brampton which I think are legitimately back and forth to Brampton.

11:50 a.m.

When you get to the airport there is a taxicab, but there is no segregation at the airport. In some airports, you would get a Toronto line, a Mississauga line, a Richmond Hill line and a Markham line. There there is no segregation; whatever cab is first in the cab line. Then there is the limousine section where you have limousines which are not licensed as taxicabs anywhere.

What I am saying is the real bone of contention is the 230-odd "taxicabs" that are really another form of airline limousine but have municipal taxi plates other than Metropolitan Toronto and operate two ways, to and from the airport. With very few exceptions, these vehicles do not do anything but airport runs. They are pretty well exclusively airport runs back and forth.

If we adopt the request of this morning's delegation--and we will get some more vehicle ones tomorrow--we will in effect be almost putting those people out of business because they have an exclusive airport business. You would take half of their business away from them.

I am not saying I am for or against it, but whether it is legitimate to take away the business from those 230-odd cabbies,

the bulk of which would then be spread around the 2,000-odd Metro cabbies who do not have an airport plate and they would get the one-way fare out to the airport.

That is the bone of contention. That is the demonstration we have had here and that is what we in the ministry have been wrestling with for the past year in consultation with all the taxi industry, the feds and so on.

Mr. Breithaupt: Just to complete that, from what we have heard this morning this return trip to the airport is not a result of the federal exclusive jurisdiction but rather something which has been allowed to develop.

Mr. Bend: In the last four or five years. It is not an old story, this is a brand new story. If it was something that had been happening for years like the airlines, we are living with it. Do you understand? They have been going for 40 or 45 years, but this is a new ball game. Why the heck were the boundaries all bust up? This is what gets me.

Mr. Rotenberg: Before the legislation was brought in in 1977 or 1978, an out-of-town taxicab could come into Metro and take them anywhere, not just the airport. The legislation about the point of pickup was more restrictive in that the Richmond Hill cab could not come into north Toronto and take people back to Richmond Hill or the Mississauga cab could not come and take you back to Mississauga, except for the airport.

The province has it within its jurisdiction, no matter what the feds do, to control the return trip to the airport. We cannot control what comes out of the airport except by negotiation.

Part of the reason for this present legislation is because of the way the airport handles licensing of vehicles which are allowed to come out of the airport. It was a way, rightly or wrongly, of allowing whoever is in the taxicab business at the airport to be able to do the two-way trips for energy conservation, efficiency and so on.

Mr. MacDonald: But I fail to see the logic in this argument that from the energy point of view it was not wise to have the taxicab that brought someone from the airport down to the Royal York Hotel going back empty. The same thing would apply to these fellows.

Mr. Bend: Exactly.

Mr. Rotenberg: There is an argument to be made and I can see a lot of merit in some jurisdictions like La Guardia for instance where any cab can go out to the airport at any time. I think you pay a small fee. In other words, open the airport wide open; let any taxicab go to the airport at any time.

Mr. Breithaupt: I thought you said we have been through all of that.

Mr. Rotenberg: Yes. It did not work out.

One of the problems at the airport is that they have some 200 limousines and some 300 taxicabs. The only other taxicabs come there by prearrangement. If Mr. MacDonald calls Diamond and says, "I am coming in Thursday at five o'clock, have a Diamond cab meet me there," then that cab can legally pick him up there.

But there are certain times in the afternoon or evening when four or five jumbos come in from overseas and the 400 or 500 cabs that are legally allowed to pick up at the airport are not enough. Then the airport will call Diamond or Metro or some other cab company and say, "Send us 20 cabs because we are short." They break their own rules at rush hour from time to time at the airport and allow more cabs to come in.

In the past number of years, with the great increase in passenger traffic at the airport, they have not increased the number of cabs that have cab plates, so they run short from time to time and I think you will confirm this. In effect, they break their rules and say, "Diamond, send us 20 cabs," or "Metro, send us 20 cabs because we are short and all these people are lined up." Then a number of cabs that technically should not be there will pick up at the airport because the ones that have the exclusive plates are not enough. There are more problems than just this particular one of how the airport is serviced.

Another problem the committee should be aware of is that, because of the exclusivity, the limousine plates are worth one big pile of money. A limousine plate is now worth some \$60,000. If you want to work for a limousine company as a broker, you will pay for this plate and you will pay \$600 a month brokerage where normal brokerage may be \$150.

There is an awful lot of money being made by airport taxicabs, which is the way the feds have set it up. We have been talking among ourselves about making some suggestions to the federal government of changing the system at the airport, not just changing one situation which would satisfy the Metro cabbies, but may or may not improve the whole situation.

Mr. Epp: You are saying the federal government gets that \$60,000 from each of the--or who gets it?

Mr. Rotenberg: No. The limo brokers have an exclusive there because of the limited number. If you want to go work for a limousine, if you buy a car, you sign on with a limousine broker. You pay some \$60,000 for the privilege of working for a limousine broker who has a federal government exclusive. It is the limousine broker who has the exclusive. He does not own any cars. He just owns plates.

Mr. MacDonald: He just traffics.

Mr. Rotenberg: Legally he just traffics in plates and he will rent those out at so much down and so much a month with a cancellation clause in it. This is basically what Jesse Flis and his task force are looking into at the airport, the whole limousine problem.

Interjection.

Mr. Rotenberg: Metro plates are worth \$40,000?

Mr. MacQuarrie: Yes.

Mr. Bend: They are going down slowly.

Mr. Rotenberg: Metro is gradually increasing the number of cabs and trying to keep the plate down.

Mr. Bend: One of the big problems too is this airport plate has become such a great thing out there. Where our cab plate used to be worth so much more than the plate out there, it is a reversal because they have a cinch going for them. If you want to buy an airport plate from Mississauga, you are going to pay a big buck down there. It goes to show you, if their plate is worth more, how more precious it is out there to be operating and we have become small potatoes here in Metropolitan Toronto.

Mr. Rotenberg: Aside from the cab industry, the travelling public who travel by whatever, taxi, limousine, to and from the airport is paying more than they would otherwise because of the exclusivity of the airport. They are paying for that monopoly privilege that certain brokers or certain taxicabs have for their airport plates. If there was not this big overhead, probably it may be \$1 or \$2 difference in the cab fare.

Mr. MacQuarrie: Are you sure of that, David, because one of the things that the Department of Transport establishes when they move in on these contracts is they try to establish a base price, flat rate which is a bit lower than the same distance travelled by cab on meter?

Mr. Rotenberg: There is a different flat fare for limousines than there is for taxis. The limousine is a little higher. Maybe you can add that--

Mr. Bend: No, the flat rate is--

Mr. Rotenberg: Would the meter fare from the airport be about the same as the flat fare that the taxis--

Mr. Bend: No. They charge a bit more. They have a flat rate coming in, but it is a few dollars more than the limousines. The limousines are a little higher than the taxis with the special licence.

Mr. Rotenberg: The taxis with the plates, the Mississauga cabs, charge a flat fare from the airport to the Royal York Hotel. How would that compare to your meter from the--

Mr. Bend: We have to go by the meter. You are referring to going back?

Mr. Rotenberg: Going back or if you happen to--

Mr. Bend: It is a funny thing. They not only cut our

throat in more than one way, but they have even lowered the price.

When you go one way, we can only afford the meter rate. We cannot afford to discount anything at all. They are discounting on the way back and cutting our throats. The airport cabs cart people and they might possibly go where the fare runs roughly around \$17 and change; they would say \$12 or \$13 to go back. Really it is stabbing us in the back in more ways than one. They are not taking the flat rate they are supposed to charge.

Mr. Rotenberg: That is the cabs as distinct--

Mr. Bend: I am referring to the airport cabs and limos.

Mr. Rotenberg: If the limousines can have the \$60,000 plates--

Mr. Mitchell: I am not sure I have got that. What would be a metered fare?

Mr. Bend: A metered fare--

Mr. Mitchell: Say the airport to the Royal York.

Mr. Bend: It is \$17.50 roughly.

Mr. Mitchell: The cabs that charge a flat fee, what would their charge be?

Mr. Bend: They have figured out what the meter price would be and it is roughly in that region, \$18 or \$18.50.

Mr. Mitchell: All right, and the limousine is about \$23 or \$24.

Mr. Bend: Yes, something like that.

Mr. Rotenberg: Some out-of-town cabs with airport plates might charge a little less than the--

Mr. Bend: Going back because whatever they are getting, it is all found money going back for them. For us it is a windfall to go up there and come back empty. We do not care about going back with a fare.

Mr. Chairman: Thank you.

There being no further questions, I would thank you very much, gentlemen, for coming in this morning and helping us out on this question and explaining it to us out-of-town fellows.

Mr. Bend: We appreciate the opportunity to speak to you people, and I hope in your wisdom you will think right, not left.

Mr. Chairman: Committee members, might I point out that you have just received three exhibits, numbers 11, 12 and 13. Exhibits 11 and 12 are written submissions where there will be no presentation or oral submission to us. Exhibit 13 is the contrary;

it is the aggregate producers, who are the fourth group of witnesses this afternoon. I just point that out. That is the one in the blue book.

Numbers 1, 2 and 3 this afternoon, the Toronto Theatre Alliance, Mr. Kolas and the Ontario Tavern Association, have no written presentations in front of us at this time.

Mr. McLean: Are they going to be here?

Mr. Chairman: Oh, presumably. They might have a presentation, something in writing with them, or they might not; but we have none at this point.

The committee recessed at 12:02 p.m.

Errata for J-26, July 15, 1982

Page 44, line 2, should read:

then, because it would save them having to spend the day.

Page 47, line 37, should read:

Mr. Breithaupt: Yes. I have run against all of them.

Mr. Brandt: I was thinking of Mr. Epp in Waterloo, as a matter of fact.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

MUNICIPAL LICENSING ACT

TUESDAY, JULY 20, 1982

Afternoon sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breaugh, M. J. (Oshawa NDP)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Epp, H. A. (Waterloo North L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

MacDonald, D. C. (York South NDP) for Mr. Swart
Spensieri, M. A. (Yorkview L) for Mr. Elston

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of
Municipal Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

Witnesses:

Kolas, S., Solicitor, Tavern Owners Association (North York)

From the Aggregate Producers' Association of Ontario:

MacFarlane, C. B., Solicitor
Main, H., Director; Chairman, Land Planning and Zoning Committee

From the Ontario Tavern Association:

Atlin, G., Solicitor
Cooper, D.
Perlman, H., Solicitor

From the Toronto Theatre Alliance:

Billings, A., Executive Director
Leary, T., President
Spicer, G., Executive Director

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, July 20, 1982

The committee resumed at 2:05 p.m. in room 151.

MUNICIPAL LICENSING ACT
(continued)

Resuming consideration of Bill 11, An Act to provide for the Licensing of Businesses by Municipalities.

Mr. Chairman: I see a quorum. I would like to set this afternoon's proceedings.

We have exhibit 14 of the Toronto Theatre Alliance. The clerk is bringing it around. Our first witness this afternoon is from the Toronto Theatre Alliance: Anne Billings, executive director, Tim Leary, president; and Paul Reynolds, president, Canadian Actors' Equity. Are those three people here? Would you come up and take chairs by the microphones, please? Would you identify yourselves, please?

Mr. Leary: My name is Tim Leary, Toronto Theatre Alliance. Mr. Reynolds is not able to be here today. In his place is Graham Spicer, executive director of Canadian Actors' Equity Association.

Mr. Chairman: Thank you. Gentlemen, take a look at exhibit 14. Who will be the spokesman? You, Mr. Leary? Fine.

Before the gathering this afternoon, might I say, we have four groups. If we could perhaps keep each presentation to three quarters of an hour, that would get us through reasonably on time and give everybody a reasonably fair shot.

Mr. Leary: I don't think, unless you have lots of questions, which we hope you do, we will take that much time.

Mr. Chairman: There may be questions involved in that. Carry on.

Mr. Leary: This brief is presented to the committee, not only by the Toronto Theatre Alliance, which represents 133 member companies within Metropolitan Toronto and environs, but is also presented by Canadian Actors' Equity Association, which represents across Canada some 3,000 professional performing artists, about half of whom live in the Ontario and about half of whom are generally employed in the province.

Also the brief is presented by the Guild of Canadian Playwrights, which represents playwrights from across the country, most of whom again are pleased to live in Ontario, and also by the Toronto region of the Professional Association of Canadian Theatres.

The Toronto Theatre Alliance cannot express strongly enough our ongoing concern that the provisions of Bill 11, the Municipal Licensing Act, will be used to prosecute legitimate theatrical productions. While this brief is presented by the Theatre Alliance on behalf of its 133 members, and you will see that in the appendix, it is endorsed as well by the members of the following professional associations: Canadian Actors' Equity, the Guild of Canadian Playwrights and the Professional Association of Canadian Theatres.

Perhaps the most fundamental issue relating to Bill 11, the Municipal Licensing Act, is that of censorship. Specifically, section 4 of the bill as presently drafted can be used as an obvious and arbitrary form of censorship. This is something which is abhorrent to members of the theatre community and in fact the provisions of Bill 11 were never intended for that purpose.

To give you some examples: in 1979 the municipality of Metropolitan Toronto enacted an adult entertainment parlour bylaw in an effort to clean up Yonge Street--you may recall that--in particular the body-rub business. At that time the Toronto Theatre Alliance expressed two important reservations about that legislation.

The term "adult entertainment parlour" was not defined in terms that would specifically exclude legitimate theatre productions.

The broad wording of the bylaw, which is derived from the Municipal Licensing Act, which is continued in Bill 11, appeared to indicate that legitimate theatre productions could be threatened.

When the Toronto Theatre Alliance voiced its serious concern about the bylaw, the Metropolitan Toronto Licensing Commission assured us that the licensing of theatre productions was most certainly not the intent of the bylaw and certainly was not the intent of the Ontario legislation, which is now continued in Bill 11.

Notwithstanding these reassurances, a legitimate theatre was charged under that bylaw and in March 1982 that case was tried. The prosecution contended that Basin Street Cabaret, a professional and legitimate theatre of several years' standing--and I might add the proprietor of that theatre has been cited by the Premier of the province (Mr. Davis) for outstanding service to the theatre community and the cultural community in the province.

The prosecution contended that Basin Street Cabaret was operating an adult entertainment parlour without a licence in its presentation of the world-famous review, Let My People Come. After a morning in court, during which representatives of the Toronto Theatre Alliance and Canadian Actors' Equity Association testified for the defence, the charge was dismissed. The judge had decided that the bylaw was not intended to apply so as to require legitimate theatres to obtain an adult entertainment parlour licence, and that this had been an inappropriate charge.

At this point, therefore, we have the following statements:

1. An initial assurance from the Metro Toronto Licensing Commission that the municipal licensing bylaws would not be used against legitimate theatres.

2. A decision by the judge in the Basin Street case in support of our contention that there is a fundamental difference between an adult entertainment parlour and a legitimate theatre production--I would hope that this committee would recognize that as well--and that the licensing provisions in this act are not applicable in the case of legitimate productions.

3. A more recent assurance from Claude F. Bennett, Minister of Municipal Affairs and Housing, that the Toronto Theatre Alliance's concern at this time is "understandable" and that "it was not the intention of the Legislature that such establishments"--as Basin Street Cabaret, in this instance--"be licensed...nor is this the government's intention in introducing Bill 11, which continues the existing legislation governing adult entertainment parlours." You can see that in appendix B.

4. A request from J. Douglas McCullough, Assistant Deputy Minister of Citizenship and Culture, that Mr. Bennett consider in the review of Bill 11 a specific exemption for legitimate theatre. You will see that in appendix C.

We accept all of these statements and believe that they were made in good faith. Nevertheless, the Toronto Theatre Alliance cannot express strongly enough its concern that the provisions contained in Bill 11 will continue to be used to prosecute legitimate theatre productions under the broad definition of an adult entertainment parlour.

It is evident that the powers granted the municipalities under the Municipal Licensing Act are formidable and that the penalties for contravention are severe. In addition to our general concerns about the extent and nature of the provisions in section 4, we are faced with the demonstrated intention of the Metro Toronto Licensing Commission to prosecute legitimate theatres. Despite the court's ruling dismissing the charge against the Basin Street Cabaret, the Metro licensing commission is pursuing the case in an appeal.

We, the members of the Toronto Theatre Alliance, the Canadian Actors' Equity Association, the Professional Association of Canadian Theatres and the Guild of Canadian Playwrights, believe strongly it is imperative that this law be drafted in such a way that it can be enforced in the spirit in which it was intended. A number of options exist which we believe could amend the act in a way that would clearly distinguish between an adult entertainment parlour and a legitimate theatre production.

1. The definition of "adult entertainment parlour" could be amended so as to exclude professional theatre from the parameters of the bylaw in much the same way as exceptions are now made for motion picture theatres and therapeutic body rubs. This could be accomplished by narrowing the definition of "services," clauses

4(2)(f), 4(2)(e), etc., so as to exclude regularly scheduled noncontinuous performances.

2. Or the phrase "legitimate theatres," which could become a defined term, could be inserted into the list of premises for which the bylaws do not apply in clause 4(2)(f), subsection 4(5).

Naturally, we would also welcome any other changes or amendments to this bill which would ensure that legitimate theatrical productions are protected from prosecution under a bylaw that was clearly never intended for that purpose, or under Ontario provincial legislation that empowers municipalities to enforce these bylaws.

That is presented by myself and by Anne Billings, and in place of Mr. Reynolds, Graham Spicer, appendices included.

Mr. Breithaupt: On the last page, and in order to sort out this particular concern which you have, you refer to a number of options. You list two. I suppose the third one would be to do nothing and take the minister's word for it.

Are there other options or are there just, in effect, these two that you have considered?

Mr. Leary: I am sure there are other options that we may not be as expert at nor have had sufficient time to do the studying on. We might be able to consult on--

Mr. Breithaupt: Do you think this redefinition or a definition with somewhat greater precision would resolve the theme you are concerned about?

Mr. Leary: I imagine that could be done. It might be very difficult to suggest what that might be. It would be very difficult to define it clearly.

There is an obvious problem here. If you read the powers you are giving to the municipalities under this act, you will find that any half-literate licensing bylaw inspector can come in and, if he decides on some particular grounds that he dislikes a perfectly legitimate and accepted theatrical presentation, he can say, "This is adult entertainment." The way it is defined so broadly, it includes an incredible latitude of possible performance.

I can understand the intention of this committee and the intention of Bill 11. There are certain things you want to exclude from availability or from commercial presentation in the province. However, the bottom line for our concerns is legitimate theatre. It is what has traditionally been recognized as legitimate theatre through many centuries.

What you need to do is go back in there and find a way to make a far clearer distinction than exists now in the powers you are giving to the municipalities.

Mr. Breithaupt: The present circumstances with respect

to morality matters, the publicizing of what might be an offensive presentation, presumably are dealt with under the Criminal Code in a circumstance that has now become familiar to the operators of theatres, indeed to the other component parts you represent as actors, writers and producers.

The framework seems to have served the system of presentations within a societal framework fairly well; if not fairly well, I would say it is a known circumstance which allows expectations and perhaps results on occasion. But in this circumstance, the use of this as a bylaw matter you think would add a great deal of variety and uncertainty to the pattern that the theatre operators know now under the Criminal Code circumstance.

Mr. Leary: That is correct. We had various assurances at the provincial and the municipal level that the powers that existed in the present legislation were not intended for the purpose. It has only been tested this one time in the Basin Street Cabaret case. That case was thrown out by the judge who heard it and now Metro is appealing it.

I am sorry, but that particular show has been presented and played, for God's sake, for eight months in Madrid, Spain. If we are enacting municipal bylaw powers which are going to permit the municipalities a form of censorship which does not even exist in a country like Spain, then we had better go back into the legislation and look at it a little more carefully.

Mr. Breithaupt: Of course, you have to remember that the government in Ontario has lasted a little longer than the previous government in Spain.

Mr. Brandt: As well it should.

Mr. Breithaupt: Perhaps the comparison is unexpected but quite understandable. Perhaps we could ask the chairman if the parliamentary assistant would wish to comment as to the acceptability of an amendment, if you see that as making sure that it is clear to any court that this is not the intention as expressed in the minister's correspondence.

I presume if you have a statement that says the definition will be tightened up, if that is the wish of the minister from his letter, then we have resolved the concerns brought before us.

2:20 p.m.

Mr. Chairman: The parliamentary assistant had asked to go after Mr. Breaugh. Perhaps he can assist by going before Mr. Breaugh at this point.

Mr. Breithaupt: As long as we allow Mr. Breaugh, of course, to speak.

Mr. Chairman: Oh, we will not disallow it.

Mr. Rotenberg: I have several questions of the

delegation, if that would be in order at this time, Mr. Chairman.

Mr. Chairman: Yes.

Mr. Rotenberg: If it is all right with Mr. Breaugh.

Mr. Breaugh: Go ahead.

Mr. Chairman: In order to clarify Mr. Breithaupt's query.

Mr. Rotenberg: If I can, I might go a little farther than that, Mr. Chairman.

I gather from what you say that you have no objection to the legislation, as such, applying to what people deem to be adult entertainment parlours.

Mr. Leary: We have some difficulty with that, yes. Speaking for the members of the Toronto Theatre Alliance, our general concern is obviously for our members. However, I do not personally believe in the legislation. I can understand what you are trying to do here and obviously you have succeeded in doing what you were trying to do, which was to clean up the things that had been brought to attention obviously through some horrendous criminal activity.

Mr. Rotenberg: With respect, the adult entertainment parlour legislation was not to sort of clean up criminal activities. It was to clean up what we considered to be pornography, which may or may not have been criminal activity. It is somewhat different than the body-rub situation.

Mr. Leary: If I am not mistaken, pornography, generally speaking, is something which is published, is it not, as opposed to personal services? This is talking about personal services and the way that it is being defined by the municipalities right now.

Mr. Rotenberg: No. Personal services is under the body-rub section. We looked at the adult entertainment. It is talking about, in effect, indecent performances. That is what is in the adult entertainment section.

If I may just proceed, how do you define legitimate theatre?

Mr. Leary: It might take quite a while to really get down to a very clear definition of legitimate theatre. Legitimate theatre traditionally--if you want to find out why we say "legitimate," having to do with law, that goes back to, I believe, the 17th century, if I am not mistaken. In Great Britain when Cromwell's government--I may be way off on my dates in all of these things, and forgive me for that--but theatre was outlawed in general at some point, and for some time there was no theatre at all. Eventually certain theatres were granted licences.

Mr. Rotenberg: In your brief, you have asked for legitimate theatre as a defined term. How in the 1980s would you define legitimate theatre?

Mr. Leary: We would have to work on that. That is something I could not come up with right now and satisfy all of the people who are constituents of mine. It is obviously fairly difficult. We are talking about a kind of traditional common law definition of what a legitimate theatre presentation is.

Mr. Rotenberg: Just follow my course of questioning for a moment. Would you consider the phenomenon we have now in Toronto of dinner theatres as legitimate theatre?

Mr. Leary: Definitely.

Mr. Brandt: What would be an example of an illegitimate theatre?

Mr. Leary: Obviously the opposite definition does not exist any more. That is something that, as I said, is derived from the 17th century.

Mr. Brandt: There has to be some distinction. Could you give us even a very extreme example of what an illegitimate theatre is, of someone who is trying to operate in an illegitimate way as opposed to legitimate, which you are having difficulty in defining or describing?

Mr. Leary: I could not.

Mr. Breithaupt: I do not think it works that way.

Mr. Leary: It does not work that way. There is no opposite term.

Mr. Rotenberg: If I may continue, Mr. Chairman.

Mr. Leary: But in terms of, for example, the legislation, we could say a performance which does not begin except for the opening time of the theatre and does not end except for the closing time of the theatre; in other words, continuous performance where there is no set period of time in which a performance begins.

Mr. Rotenberg: A continuous performance, you would say, is not a legitimate theatre. Is that what you are saying?

Mr. Leary: This is what he is searching for.

Mr. Rotenberg: I am asking you because you get some of these dinner theatres that have more than one show in an evening.

Mr. Leary: Yes. But there is usually a show that begins at a specific hour for which the audience assembles, and there is a performance which has a beginning, a middle and an end and it can be defined.

Mr. Spicer: If I may, I think the best definition is a booked show, a show with a script.

Mr. Rotenberg: Such things as now at the Royal York, Las

Vegas Illusions, you would consider that to be legitimate theatre?

Mr. Leary: It depends on how broad we are trying to get here. You have a variety performance--

Mr. Rotenberg: I have a purpose for what I am saying because I am leading you into something. You see, if you just keep taking one short step forward, if you say what is at the Royal York, which is a variety show, is something legitimately excluded, you go on to other night clubs which have a show--they may have two or three shows in an evening--whether that not be considered legitimate theatre.

Interjection: In my opinion, yes it would be.

Mr. Rotenberg: And you take from that to the ordinary tavern on the street which has three or four or five shows a night. It is just a strip show which may not have any words but it is still a show and that is what they are licensing, which is--

Mr. Epp: They do have a beginning and an end?

Mr. Rotenberg: They do have a beginning. What I am trying to say to you, madam and gentlemen, is that when we as a Legislature are trying to write some laws, if you start and try to define what is theatre, where do you draw the line and where do you stop? You seem to agree, or some seem to agree, that our definition of adult entertainment parlour includes what is a strip show in a tavern, which has a beginning and an end and has set times and you work your way backwards all the way back through the Royal York and through the cabarets and then to the Royal Alexandra.

Now, where do you draw the line between legitimate theatre and adult entertainment parlours, because if we are trying to write law, we are going to draw a line somewhere because everyone can either get in or out without the law and that is a problem I am having in listening to what you are saying?

Mr. Leary: I will grant you there is definitely a problem there and Anne would like to speak to it.

Ms. Billings: There are those suggestions that we have made, those two and any others that you might like to come up with. For us, they merely simplify the process that you point out.

For example, in the Basin Street case the prosecution and the defence ended up arguing and trying to define four or five separate terms--adult entertainment parlour services, legitimate theatre, the whole works. They kept coming up against this and most of the arguments on either side had to do with various interpretations of those points.

What this allows us to do is to rely on the integrity of the judge, if it is going to come to that, to decide in his own view, based on theatrical tradition, whether or not the particular performance in question is legitimate theatre or rather might fall into some other category.

Mr. Rotenberg: The problem I have is if we accept that and we say that a performance such as Let My People Come, which some people considered obscene--I have not seen it so I will not put a judgement on it--you can go to your corner tavern which now has a stripper every 20 minutes or whatever which is under this definition considered to be adult entertainment, that person could by making some slight changes and by having a little bit of dialogue and a little bit of script say: "I am just as legitimate theatre as Let My People Come, or the Royal Alex. I may have a shorter show."

People could, by a slight bit of restructuring, have what the legislation intended to get at come under the same definition as you are, and the problem I am having, in answer to Mr. Breithaupt's question, is if we put lines into the legislation just where do we put the lines and how do we draw the lines?

Some of the members of the committee may argue that none of these performances should be licensed. I think that was Mr. Breaugh's argument on second reading in the Legislature, that they are legal under the Criminal Code and leave them alone, or they are not legal under the Criminal Code and prosecute them that way.

Having been given the Legislature's virtually unanimous votes of a few years ago to license adult entertainment parlours, which is clearly to get at the obscene performance of the strippers or whatever, if we adopt your definition, do we draw a line or is it possible to say we leave it the way it is and let the courts decide just on the basis of present legislation? I am saying that I, as the ministry, have these problems.

Mr. Leary: I would agree with Mr. Breaugh suggesting you take the whole thing out. I would go along with that, too. That would clear up our problem very succinctly. Let the Criminal Code deal with it.

Mr. Rotenberg: In the absence of that, have you any suggestions? Because the way you have defined it, I think all the people who the legislation is trying to get at might come under the umbrella of your exemption.

2:30 p.m.

Mr. Leary: You could use a test, for example, a peer group recognition of some kind within the various artistic communities.

Mr. Mitchell: In legitimate theatre, would all members of that legitimate theatre organization belong to the Canadian Actors' Equity Association or to the American Guild of Variety Artists or whatever?

Mr. Leary: Generally speaking, certainly that was the case in the Basin Street Cabaret case. However, there might be several different memberships involved. For example, the management of the theatre may belong to the Professional Association of Canadian Theatres. Some of the cast members may or may not belong to the Canadian Actors' Equity Association.

Mr. Rotenberg: Some of the strippers belong to the union too, so where do you draw the line?

Mr. Mitchell: I am just trying to get back to this business of legitimate theatre.

If they are talking about people who belong to Actors' Equity and the American Guild of Variety Artists, and there are a number of organizations I believe, maybe that is where the saw-off is. What does concern me is following along another comment that was made. If we were to identify or define legitimate theatre as being that where the members of the cast belong to one of these recognized groups, who is to say then that the people the municipalities are trying to exercise some level of control over would not be accepted with open arms by Actors' Equity or AGVA or whatever, and circumvent what this bylaw is trying to do?

Mr. Leary: I do not know, how much control are you trying to exert over what people can do and say?

Mr. Mitchell: You and I may differ in that, I suspect, probably you would be one who feels that censorship maybe is not an area that government should be concerned about, or things like that. I would disagree with you on that, but looking at the point of legitimate theatre, if there was a way of defining it clearly so that it would not leave the door open, it might not be too difficult. Even you express some difficulty in identifying just what legitimate theatre is.

Mr. Leary: There is difficulty. One of my favourite phrases of all time going back to my days of studying Latin is de gustibus non est disputandum--there is no accounting for taste. How do you define art? That is exactly what you are trying to wrestle with here. I admit that it is a tremendously difficult thing.

If the legislation stands right here, essentially what you are doing is allowing a particular kind of definition which filters down to the people who are issuing the bylaws and the licences, or the people who are inspecting. Then it filters back up through the courts at tremendous cost, for example, to theatres, to the licensees.

Mr. McLean: Are you even covered under this bylaw?

Mr. Leary: Absolutely.

Mr. McLean: Does not paragraph 4(2)(f)5 exempt the Theatres Act?

Mr. Rotenberg: The Theatres Act is movies.

Mr. MacDonald: For those who still argue the (inaudible) of censorship, I invite them to take a look at the laughing stock that they put themselves in. I think of the dustup we had in this Legislature over Tin Drum, over one or two scenes where I suspect the average child would never even perceive what was going on, and yet the censorship board passed Caligula. You need to be pretty

schizophrenic to get into a frenzy over Tin Drum and pass Caligula. If you have not seen it, you should go and see it.

Mr. Mitchell: --area of discussion on that because you and I might get into some very lengthy ones on it. I am trying to assist here because I recognize what they are talking about, or at least I hope I do. But the difficulty is with definition.

Mr. Breithaupt: I was just going to say, Mr. Chairman, since the clause-by-clause discussion is not going to be until the Legislature returns, could we ask that perhaps this group, with the variety of component parts it has, might attempt to give a definition or prepare a definition that might well be acceptable to the committee if it is a possibility when we get to that stage? At least we will have something to work with which may find acceptance by the majority of members.

Mr. Chairman: I think Ms. Billings wishes to respond to that.

Ms. Billings: That was the point I was going to address. Given the time frame we were presented with, we specifically decided not to retain a lawyer to do the clause-by-clause analysis you are asking for or to come up with a definition of legitimate theatre which would fit into the context of this bill. What you have just described is entirely possible and it is something I think we could do.

Mr. Breithaupt: I presume at that point you had suspected that the bill was going to be completed in these two weeks, but the number of those interested in appearing before us will use up the time with public presentations so the committee stage of clause-by-clause will not be upon us until the fall.

Mr. Leary: We certainly want to hold off.

Mr. Chairman: Quite the contrary. Would you please not hold off with your definition? Get it in quickly.

Mr. Leary: That is not what I am saying. I do not want this committee to go ahead and decide that the bill as presented at this point is sufficient to satisfy what you are seeking.

Mr. Breithaupt: It would be in October.

Mr. Leary: That is time. That gives us time to do something.

Mr. Breithaupt: None of us would prefer that nothing be done. In fact, the requirement is to do something.

Mr. Leary: I definitely feel that the requirement is to do something.

Mr. Chairman: Mr. Breaugh is next on the line.

Mr. Breaugh: I have had some great difficulty with this whole portion identified here as section 4 of the bill, which is

causing them a problem as well. The real difficulty I have is I do not know what the hell an adult entertainment parlour is, but in my ongoing quest for justice I have been researching it and it occurs to me that in the last 24 hours I have been in two of them. One was in my living room--

Mr. Rotenberg: Strictly for research purposes.

Mr. Breaugh: One was in my living room last night, because on CBLT last night they broadcast a movie whose name escapes me, but it was one of the "Carry On" things, and lo and behold in my living room--and so was anybody else in a bar, tavern, restaurant, corner milk store or whatever--I find I was in violation of subparagraph 4(2)(f)4(f) because very prominent in part of this movie was a live action photo of a young woman's rear end, and that falls clearly under that subparagraph.

Mr. Brandt: You could go to jail.

Mr. Breaugh: That is my problem here. This piece of legislation says that I and anybody else who was watching channel 5 last night were clearly operating, without a licence, as sinful groups.

Then to compound things even further, I stopped into Mac's Milk this morning and I found that I am also in violation of subparagraph 4(2)(f)4(b) and so was Mac's Milk because they clearly had some books and magazines there which are very clearly defined under adult entertainment parlour in that subparagraph.

I have come to the conclusion that this whole section ought to be taken out of here. I do not think the intent was that we provide municipal councillors with a job that nobody else wants to take on, and that is to become some kind of a censorship board.

I think I have found the solution. I noticed as we go through this, paragraph 4(2)(f)5 in that section says something rather nifty: that those things which are licensed under the Theatres Act, that is to say, movies, clearly are not covered.

I think that is your salvation. If we are saying that whatever is being shown at the movie theatres is regulated sufficiently by some other agency and is licensed sufficiently by some other level of government, let's exclude it.

It seems to me it is very rational that if we are going to do that with movies, why do we not do that with legitimate theatre, with performances by any other group in any other way? If a tavern licensed by the Liquor Licensing Board of Ontario is offering a show, is it not just as legitimate and reasonable to exclude the tavern because it is licensed by a provincial agency? All the mores of society come to bear on the movie theatres. Why do we not do the same thing with everybody else? It seems to me it would resolve the problem here.

If we have a legitimate theatre, and we are all fumbling around for reasons to define what legitimate theatre is, it seems to me in a million and one ways we have already done that. After

all, we cannot have Bill giving the guy an award one day and Metro Toronto trying to put the guy out of business the next. That is not rational. So let us just broaden section 5 and let us say that here we have a section where we have made our intentions clear.

2:40 p.m.

If the thing is licensed like a movie theatre by somebody else, let us take it out of here. If the operation is licensed, as they would be under under the Liquor Licence Board of Ontario, let us take it out of here. Because once you get into the kind of definitions that you try to do here, I cannot make the distinction.

If it is not legitimate to watch Sola La Boom-boom perform at the local strip joint, which I find interestingly enough is written in the legislation here, how is it legitimate then at the O'Keefe Centre, once a year, to let somebody else come in, perhaps with a more legitimate background, it is true, but virtually doing the same thing? Or, are we making the distinction between say somebody who plays Night Train and somebody else who plays Beethoven? That is a matter of taste.

I cannot see how you can make those distinctions, but I can see in the act that we have a section here which establishes the principle I am looking for. If somebody else is licensing and it is considered to be a legitimate business, then they should not come under this. The municipalities then should not be overriding other governments who are licensing.

I am wondering if that approach would resolve your problem. If we said that a theatre--everybody knows what a theatre is, legitimate or otherwise, dinner theatre or otherwise--if a theatre is licensed in some other way, that they be excluded from this one.

Mr. Rotenberg: They do not have a licence; if they serve liquor they do, but the ordinary theatre does not have a licence--

Mr. Breaugh: I cannot think of a theatre which is not licensed in one form or another by somebody. If they are serving dinner they have all kinds of inspectors in there. If they are serving alcoholic beverages, they are inspected

Mr. Chairman: Fire code.

Mr. Breaugh: Fire code. I mean there are a million and one ways in which a theatre is governed, no matter what kind of show goes on there, and it seems to me we do not need the million and one way to do this. It is already covered, let us exclude it. Would that be a legitimate way to proceed from your point of view?

Mr. Leary: It may be. I do not know exactly what licensing provisions there are that govern all the possible combinations and permutations of what we would consider to be a legitimate theatre.

Mr. MacDonald: The Liquor Licence Board of Ontario and the censorship board potentially.

Mr. Rotenberg: Mr. Chairman, from what the lawyers tell me those places like the O'Keefe Centre that have LLBO licences you might catch them, but some of the little theatres around town have building permits; that is not a licence. They do not have a real licence from anybody. I do not think, with respect, that would solve your problem.

Mr. Breaugh: The distinction I want to make though is that where it is something which we all consider to be legitimate theatre, to use the traditional term--that is to say, you and I and Cromwell decide this performance is legitimate and we have licensed it in some way. We recognize that is a place of entertainment within the mores of our society and we recognize it as such.

Why do we not just do that? Let us forget about this adult entertainment parlour, which makes no sense to me any way I look at it. Quite frankly, I do not see how, with this kind of legislation in front of us, and municipalities out there, how they will avoid not prosecuting Mac's Milk, because it clearly falls within the definition here.

I think that the perversion which entered the picture here is that everybody had one set of places in mind when they passed the law and they put this name on it and then they tried to redefine it, but it makes no sense. I did not elect my municipal council to sit as a censor board for my community and I do not want that. I am not sure that anybody does.

If there is a tavern, a restaurant, a place where theatrical productions occur, no matter what they might be, I do not think any of us intend them to be in this act as I read the little correspondence from--what is the guy's name, Bennett? He does not either, so let us take them all out. If nobody has that intention, let us get them out of here. Let us stop the process. Is that too logical?

Mr. Chairman: It may be a little Metro Toronto-ish.

Mr. Breaugh: I am not worried about Metro Toronto. It is an animal unto itself. I am worried about the rest of the world, where sanity prevails.

Mr. Rotenberg: First, about Mr. Breaugh's point about Mac's Milk should be prosecuted or persecuted. This is permissive legislation which gives municipalities the right if they wish to license these things. It does not say they have to.

Second, it gives the municipalities the right to require a licence in these situations. I think when we get down to it probably what has been requested by the municipalities is through licensing to be able to get at what they consider to be "obscene."

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Mr. Breaugh: But did it ever anywhere occur to anybody that we want municipal councils to be that agency which censors performances? I do not think so.

Mr. Rotenberg: It is not a question of what we want. It is a question of whether the Legislature, when it passed this legislation four years ago--this is pretty well a straight lift from the legislation--

Mr. Breaugh: But that--

Mr. Rotenberg: May I finish please?

Mr. Breaugh: Sure.

Mr. Rotenberg: Was to give the municipalities who so desired the right--the right--to require licences and to be able to set regulations for these kinds of situations, be they a bookstore, theatre, tavern, whatever, if they considered whatever goes on at that place, be it by dress or undress, be it by pictures or whatever, to not be within what that communities definition of obscenity is--

Mr. Breaugh: If I could just read briefly from Mr. Bennett's letter. He said: "Your concern that legitimate theatres might be required to hold municipal licences is understandable, particularly considering the charges laid against the Basin Street Cabaret. It was not, of course, the intention of the Legislature that such establishments be licensed when the adult entertainment parlour section was enacted."

Here is the minister saying what the government's intention was. He says clearly, "It was not our intention to do that."

Mr. Rotenberg: And the question becomes, Mr. Breaugh--I am just trying to get the issues on the table, because it is a legitimate and serious issue. It certainly was not the intention to go to legitimate theatre.

What I ask is how do you define "legitimate theatre"? Is it by the traditional definition? Supposing there is a community--and this is the question--where something under the guise of legitimate theatre comes in with a performance which the community feels to be within the definition of an adult entertainment parlour and not within the regulations they have for certain definitions of obscenity?

Some people do not like--as in Metropolitan Toronto, in a night club you cannot have total nudity with a stripper. You have to wear something on the bottom or something on the top. I think you can have one or the other, but not both bare. For whatever reason, I believe that has been the definition of obscenity or the regulation they have put in for someone to have a licence.

The question becomes: should this Legislature give to the various communities in the province, through their elected officials, the right to set these standards of obscenity and the right to require licences from those businesses, in whatever form they are, to have a licence and to set regulations as to what those people can and cannot do under the terms of obscenity? That really is the question before us.

In 1978 the Legislature decided they could have that right. Now today--

Mr. Breaugh: Wait a minute. Your minister said they did not--he says very clearly in this letter to these people, "It was not, of course, the intention of the Legislature that such establishments be licensed."

Mr. Rotenberg: That is the legitimate theatre. Now the question becomes how do you define legitimate theatre?

Mr. Breaugh: That is my problem. I think when we write this kind of legislation we should be as clear as we can. It is not my intention, and according to this letter from Claude Bennett it was never his intention, that a municipal council be set up to in any sense make those distinctions about legitimate theatre. Other people do that.

I never voted for a municipal politician in my life on the basis that he or she was going to set the standards of censorship for my community.

Mr. Rotenberg: But a lot of other people have voted for municipal politicians on that basis.

Mr. Breaugh: I would like to find the one person in Ontario who consciously voted in the last municipal election on the premise that my council is going to set the standards for my community in terms of censorship, what I could see in terms of a theatre performance or any other kind of performance.

I do not remember seeing anyone running for municipal office who made that part of their campaign. That "Here I am, I am now going to become not just your municipal councillor, I am going to become your own little censorship board too."

Mr. Rotenberg: But members of the Toronto city council back six or seven years ago made a big thing about the fact that they were going to "clamp down on Yonge Street and stamp out these organizations." It was that sort of campaign.

Mr. Breaugh: Yes, I remember them saying very clearly they wanted to clean up Yonge Street. But I do not remember them saying they were going to prosecute Basin Street.

Mr. Rotenberg: No, but they were going to prosecute obscene performances in whatever form. They did not distinguish between the strip joint, the tavern, or the other thing.

Interjection.

Mr. Rotenberg: Whether they did or not, that was the impression they gave. I am not saying they were right or wrong, I am just saying--

Mr. Breaugh: At any rate, I tend to take it a bit further than you would. I would like to hear your views on this whole section.

It strikes me that this puts into the municipal bailiwick something which does not belong there. It is my point of view that this whole section, at the very least, has to be totally rewritten to really mean something.

Better yet, it should be taken out of there and you should expand the one subsection here which acknowledges that for movie theatres this does not apply. If it does not apply for movie theatres, how in the world do you rationally apply it anything else? What would be your response to that approach?

2:50 p.m.

Mr. Leary: I would agree with you that there should be some way of taking it out. The municipality, in acting by charging Basin Street under the provisions permitted by the current legislation, said: "We do not want to have anything to do with censorship. We are not making a judgement as to whether this material or this show is obscene."

Everybody agreed it was adult entertainment. The prosecution, the defence, everybody agreed it was adult entertainment. What they were saying was, "You are operating an adult entertainment parlour without a licence," regardless of whether it was obscene or not.

As a matter of fact, they said, "No, it was not obscene," but they wanted to charge them anyway because they have the power to do so. I do not know who the hell is back there with the cattle prod telling them to go out and prosecute the legitimate theatre, but by God they are on that path right now and they are pursuing it.

Mr. Breough: Are you aware of any other attempts by Metropolitan Toronto to bring current legislation to bear on anything else?

For example, I am told, and have read some reviews and seen some advertising, that the Royal York Hotel has a Las Vegas style review which features male and female nudity. It seems to me to be logical and consistent, if they were chasing Basin Street a little while ago, they certainly ought to be chasing the Royal York this week. Are they doing that?

Mr. Leary: No, not that we know of at present, but it took the municipality over a year to come in and charge Basin Street. The show had been running a year. To my knowledge, there were no complaints from the public that it was running without a licence.

Mr. Breithaupt: Is this an attempt simply to raise revenue?

Mr. Leary: What you permitted under the existing legislation is certainly punitive.

Mr. Rotenberg: What is the charge just for operating without a licence? Was that the charge you were in court about?

Mr. Leary: That is correct. Let me also remind you what that permits the municipality to do is to demand that the actors in a legitimate theatre have health inspections, that they themselves become licensed as attendants.

I am sorry, but the professional associations, including Canadian Actors' Equity Association, are not going to permit their membership to go out and get health inspections and be called attendants. I do not think you would suggest that some of our better performers in this country should be required to be licensed in such a way. It is grotesque in my opinion, tremendously undignified.

Mr. McLean: Due to the comments that have been raised here, I am sure now that the minister is going to take it back, and when they bring it back revised that will be either defined or will be out of it.

Mr. Breaugh: Can we have that assurance from the parliamentary assistant?

Mr. Rotenberg: You can certainly have the assurance that after we finish the discussion we will be taking another look at this.

Mr. Breaugh: I want to point out to you that a group that comes to mind is one which very often does works which would fall clearly under here, under this definition, would be the National Ballet of Canada which certainly has dancers who are extremely sensuous. They would clearly fall under this and I cannot believe the province wants to enact even permissive legislation which would attack the reputation of the National Ballet of Canada.

It is not quite to my taste, but none the less, there is no accounting for taste.

Mr. MacQuarrie: To take Mr. Breaugh's question just a bit further, would there be any practical difficulties to having legitimate theatre, however defined, subject to the same rules that movie distributors are currently subject to under the Theatres Act?

Mr. Rotenberg: Technically that could happen. I do not think the ministry will be recommending that. First of all, we are dealing only with permissive legislation of municipalities. That would be something else. My personal opinion would be no. I do not think that should happen.

Mr. MacQuarrie: To my mind, if you are catering to in many cases the same audience and if one is, by some stretch of the imagination--and I find it may be hard to suggest that these people might be--offensive, surely the same sort of standard should apply as applies to the distribution of movies.

Mr. Rotenberg: Once a movie is printed, it can go anywhere in the province. It can have many prints, whereas a stage show is pinpointed at a particular theatre.

Mr. MacQuarrie: Certainly it is usually operating out of a particular script and a particular flow of action and the rest of it. Is that not--

Mr. Rotenberg: It could vary from day to day.

Mr. MacQuarrie: Does it vary from day to day, impromptu?

Mr. MacDonald: It is like Eugene Whelan's speeches; they are impromptu.

Mr. Breaugh: Nothing in this world is like Eugene Whelan's speeches.

Mr. Breithaupt: If anyone is seeking the appointment of a lord chamberlain in Ontario, we are going to be in some difficult times when we look at otherwise censorship within the theatres.

The one point I wanted to make was following the earlier view that some attempt at definition might be worth while. As the chairman and some others are aware, when these matters come before the courts, the judges are only able to say, "The Legislature, in its wisdom"--to use a well-known phrase--"decided such and such is in a statute."

The courts cannot look at anything behind the statute, in my understanding. They cannot look at the Hansard report of today nor the letter from Mr. Bennett as to what the government intended. They would look simply at the legislation.

Therefore, if we are concerned about this theme and we wish to follow through on the comments from Mr. Bennett with government policy that this is an area which was never meant to be included, then I suggest we have to come up with some type of definition to ensure that is the case, because otherwise all of our discussions this afternoon and the interested and learning kind of experience we have gone through is going to be of no value or use to the courts.

We must either define it now or hope that it will go away as one case under appeal may be decided, which would complete that scene. But, of course, if the appeal is successful, then whatever the Legislature had as its intention will be looked upon by subsequent courts in a different way and will demand amendment. So we had better make the amendment or the definition now if that is the policy of the government.

Mr. Chairman: Time is pressing on.

Mr. Rotenberg: As I said, we are going to have to have a look at this. It is going to come up in the next as well, but really the question becomes, from all of the members of this committee and the Legislature, whether in your own communities should the community as such, through its elected local representatives, be able to have some regulation over what some people would consider to be obscene performances. Whether it is a theatre, a night club, a strip joint, a bookseller and so on, will

they be able to regulate such places, which may be somewhat different than censor, and have some--

Mr. Breithaupt: The minister has said, "No."

Mr. Rotenberg: The minister said, "No," only as far as legitimate theatre is concerned, and that is a very difficult thing, to distinguish between legitimate theatre and what may be masquerading as legitimate theatre, which is now licensed, which is a strip joint in the local tavern.

I think it goes beyond--because we are going to hear from some other people in a few moments--just the concerns of legitimate theatre, which is part of it. Of course, as Mr. Breaugh said in the Legislature, the whole section of the act, whether or not municipalities should by permission of this Legislature have the power to license and to regulate what, in that community, some people may consider to be obscene performances--I can use that as a general term--or obscene whatever.

Mr. Breithaupt: And yet without definition, we will not be doing our job, if we simply dump the general theme on the municipalities.

Mr. Rotenberg: I am not suggesting that we do not define it, but I think if Mr. Breaugh can bring it up later--I know he has sort of given notice that he will--that he wants to take the whole section out. He is trying to say the municipality should not have this power at all.

This is the sort of thing this committee may well come to a conclusion on at the end of this week's session and we should at least have some indication from the committee members how they feel about this sort of thing, which may be of some guidance to the ministry and looking this over between now and when we come back on the clause by clause.

3 p.m.

Mr. Chairman: Thank you very much. The time is pressing on. I thank you for appearing before us. If you wish, you may stay and listen to some of the others who are coming on this afternoon.

I would like to call on the second group, the Tavern Owners Association of North York, and their spokesman, Mr. Kolas. I draw to the committee members' attention that this group is from North York, because the third presentation is by the Ontario Tavern Association. I was confused myself. You are getting exhibit 15, which does not come from this group. There is the Tavern Owners Association of North York and the Ontario Tavern Association. Do not mistake the written presentation as having come from the North York group, it is from the Ontario association.

Mr. Kolas: Ladies and gentlemen, my name is Stephen Kolas. I act for a number of the individual members of the Tavern Owners Association, specifically some of the members in North York. I am their lawyer.

They have some concerns about the adult entertainment parlours section of this legislation. Specifically, their concerns are directed to the fees section or the exemption section, that is clause 2(6)(a) which exempts adult entertainment parlours from the formula for fixing the fees payable to the local licensing commission.

My clients are concerned that a prohibitive fee may be set under this clause and a prohibition worked thereby. The general structure is that \$10 or \$25 yearly fees may be fixed by a commission or the total bill for licensing be divided and the fee fixed in that manner.

The exemption section for body-rub parlours and adult entertainment parlours allows the municipality to fix whatever fee it wishes and perhaps thereby to prohibit the establishment.

The next area of concern they have is the ability of a commission or municipality to prohibit or terminate the licence of an existing establishment, that is an establishment that may be carrying on a legal nonconforming use according to local zoning bylaws. It is my submission that this power is worked through paragraph 2(4)(h)4 together with clause 4(2)(c). That is the particular segment that gives the municipality the power to define permitted and nonpermitted areas within the municipality.

Mr. Chairman: What was your second reference, Mr. Kolas?

Mr. Kolas: Clause 4(2)(c). That is notwithstanding paragraph 2(4)(h)4--my first reference--the local municipality may define permitted and nonpermitted areas and thereby refuse a licence or renewal of a licence to an existing establishment. In effect, the legislation therefore becomes not permissive but prohibitive, and confiscatory to some extent.

Mr. Rotenberg: That is only for body rubs, that does not include adult entertainment, as I understand it.

Mr. Kolas: No, I am reading from the adult entertainment parlour subsection, clause 4(2)(c).

Mr. Chairman: Do you mean clause 4(1)(c)?

Mr. Kolas: No, I am talking about subsection 4(2). The clauses appear to be identical. It is my understanding that this particular clause could and would be used to terminate licences of existing establishments. As you probably know, there are about 50 or 60 establishments in Toronto. I am here representing approximately 12 of them in the North York area.

Perhaps I should give you some background. I act for the Capital restaurant, which is run by the Papadopoulos family; Northgate, Steve's restaurant, Andrew's, Sigma, Arrow, Aristocrat and Tony's. All of my clients operate their businesses in a family manner. They are husbands and wives, usually, working together. They have families to support. Basically, their life savings are in these establishments. If we take away their licence to operate, then their business could go down the drain very easily. At that

point it is not very well described as permissive legislation. They have carried on their businesses in compliance with all the laws in effect at the time; to give the municipality, at this point, the power to take away the licences, could mean their businesses would very well go down the drain.

They are not asking that you do away with this legislation altogether. Most of my clients are willing to live with restrictions and rules and regulations--they have in fact been complying with all the rules and regulations--but I understand some of the local municipalities have expressed a desire to get rid of these types of establishments altogether. If that occurred, if the local municipality defined its areas narrowly, then of course renewal of their licences could be refused under the proposed legislation and that would take away their ability to operate.

Those are my clients' specific concerns: that the amount of the licence fee might be used as a prohibitive measure, and the permitted areas definition to get around the legal nonconforming use that some of them enjoy at this time.

Mr. MacQuarrie: I would assume the principal business is a tavern, and a secondary sort of undertaking being carried on is this adult entertainment.

Mr. Kolas: Yes, that is correct.

Mr. MacQuarrie: Can the tavern not operate successfully without it or is this the--

Mr. Kolas: Some of them may. However, as you probably know, a restaurant is probably the riskiest type of business to get into. These people for whom I act are mainly Greeks and Macedonians and this has been their principal occupation for all of their lives. In many instances they have put their life savings into one particular establishment. With the turnover which takes place in this business, they would certainly be at risk. There are new places opening up all the time, and of course there are places closing up.

Mr. MacQuarrie: Adult entertainment is very narrowly defined here in the act as something that is suggestively erotic. There are other forms of entertainment that might be just as appealing to patrons of these establishments or just as attractive, but that certainly would not be covered by the statute--honky tonk piano or what have you, any of that.

When you speak of these nonconforming rights, is it their right to have this adult entertainment in their businesses?

Mr. Kolas: It is a right they have now. Some of the local municipalities have passed zoning bylaws with respect to adult entertainment. Since they have been carrying on business and are licensed, they could not be put out of business in that fashion even though at this time some of the local municipalities have said, "We do not want any of them in our borough."

Mr. MacQuarrie: Okay, I follow you now.

3:10 p.m.

Mr. Kolas: The sections I referred to would, of course, give the municipality the power to terminate that particular type of operation. They are, of course, licensed under the Liquor Licence Board of Ontario and certainly they could carry on--

Mr. MacQuarrie: That aspect of their business would not be threatened.

Mr. Kolas: No, it would not.

Mr. Breaugh: There are a couple of points I want to make. All of the people you represent are people who are recognized, licensed and regulated as taverns.

Mr. Kolas: Yes, that is correct.

Mr. Breaugh: That being so, can you conceive of a way in which one would overrule provincial legislation with a municipal bylaw? In other words, if somebody is licensed by Ontario to run a tavern, is it generally held in the law that some municipality out there can pass a bylaw which overrules provincial law? I always thought it worked the other way around. How can that happen?

Mr. Kolas: I am terribly sorry. I do not understand the question.

Mr. Breaugh: How can you allow a municipality under this permissive legislation to overrule provincial laws governing the running of a tavern?

Mr. Kolas: You are dealing with two separate questions. There is licensing under the liquor licence board. My understanding is it does not deal with questions of obscenity. The board concerns itself with the running of a tavern and percentages in connection with food and liquor sales.

In this legislation, the adult entertainment parlour bylaw, you are talking about licensing and regulating the services that are provided in that type of establishment. I do not know of any conflict so far. Does that answer your question?

Mr. Breaugh: Let me ask the parliamentary assistant then. You are proposing in this legislation that municipalities would be able to pass certain bylaws under this act which would clearly override other laws of Ontario: how can that be?

Mr. Rotenberg: First of all, I would point out that we are not proposing. This is legislation that is now in effect, passed by this Legislature some four or five years ago. I believe Mr. Breaugh voted for it, Mr. Chairman. It was passed with only one person in the Legislature dissenting and that was the former member for Lakeshore. It went through the House. Everybody was in favour of it at the time, so it is not something new we are doing. It is something--

Mr. Breaugh: I want to point out, since you are going to read that into the record, that I was under the impression that the minister should be taken at his word. His stated intention has already been read into the record this afternoon. If you want me to do it again, I will do it.

Mr. Rotenberg: You are talking about the legitimate theatre part of the legislation.

Mr. Breaugh: The intentions at the time of the original act being passed were fairly clear. The bill was to address itself to certain problems that were located in Metro Toronto, most colloquially it was put as being, "a bill to clean up Yonge Street." I do not recall anybody standing up and saying, "This is now going to extend to all the taverns in Ontario," or even in Metro Toronto.

I thought the bill was pretty specific in its intentions. If the intentions were otherwise, I certainly misread them because I thought the intentions were relatively clear and the arguments were relatively concise and supportable. I did not hear anybody standing up saying at that time that act was going to be used to regulate taverns in North York.

Mr. Rotenberg: By the way, that bill was brought in by the Ministry of the Attorney General and not by this ministry, as you probably remember. That is one of the reasons this bill is now up for review. I am not being critical of you or any other person in saying that it passed with everybody in the Legislature voting for it.

Mr. Breaugh: I admit my fault. I believed the government when through the minister it gave me its stated intentions in an honourable way; and that is my stupidity, I should have known better.

Mr. Rotenberg: Some six months after that bill was passed, there was another bill which removed the exemption of premises licensed under the Liquor Licence Act from being exempt as to the adult entertainment provision.

It was then clearly the intention of the Legislature, rightly or wrongly, that those premises licensed under the Liquor Licence Act from the point of view of liquor sales and so on, could also be licensed by the municipality for the entertainment they put on separately and distinct from the Liquor Licence Act. That was specifically legislated by this Legislature in December 1978.

Mr. Breaugh: Would it not be a rational thing to say that people such as this gentleman represents, people who run taverns, are licensed and regulated sufficiently now without this bill or any previous bills that were attempted?

Mr. Rotenberg: Before anyone gives a definitive answer to that question, on Thursday of this week we are going to be hearing from the Metropolitan Toronto Licensing Commission, which has some pretty definite and different views on the need for this

legislation. If we are conducting public hearings and hearing all points of view, I think before anyone comes to any final conclusion one should hear all the witnesses and all the points of view; before we as a committee or as individuals make up our minds we should hear from all sides.

I am not saying they are right or wrong, but you will hear from other people before this committee this week an entirely different point of view as to why other people think this is a necessity and is very much required. I am prepared, before I commit myself, let alone the ministry or the government, to hear all the witnesses, and in particular before I answer a very definitive question as to do I think this should or should not be in the legislation.

Mr. Breaugh: Let me ask Mr. Kolas a couple of other questions. One of the things which concerns me is that throughout this legislation and previous acts the point has been made fairly strongly that the purpose of the exercise is not to prohibit but to regulate. Is it your judgement the net effect of this now is to prohibit?

Mr. Kolas: Certainly. We are willing to live with regulation. I do not think any of my clients favour the situation before the bill or want a dirty Yonge Street strip or anything like that. They are willing to live with regulation. They are family members, just the same as you and I. What they do not want is for their business to be destroyed and I do not consider this permissive legislation at all.

The two specific sections I mentioned would, first, give the local municipality the power to prohibit by setting an exorbitant fee; and second, define areas so narrowly that they put existing owners out of business. They did not have that power before.

Mr. Breaugh: What are the fees now?

Mr. Kolas: It is \$3,300 per year.

Mr. Breaugh: Has anybody ever put a justification to you that the purpose of that fee is anything other than prohibitive in nature?

Mr. Kolas: No.

Mr. Breaugh: Has anybody ever justified for you the amount of the fee?

Mr. Kolas: No.

Mr. Breaugh: So, as far as you understand it, that is a rather arbitrary amount that is put out there?

Mr. Kolas: Yes.

Mr. Breaugh: I would remind other members of the committee we are looking at a bill which says that as a norm the fees charged under this act should be \$10 and \$25, and the

existing practice--for these people anyway, these tavern owners--is a fee of \$3,300. That causes me some concern.

The second point I want to raise, is it true, as I have heard, that a number of--

Mr. Epp: Are you talking about what they are currently paying?

Mr. Breough: Yes.

Mr. Epp: Is it not \$300? You said \$3,000.

Mr. Kolas: It is \$3,300 per year.

Mr. Breough: Two threes and two big cookies.

Mr. Chairman: Might I break into your questioning just for a second, and I apologize for so doing.

We have had a couple of requests for other groups to appear before us, one a cab driver and so on. Do I have your permission to see if we can line them up at 9 a.m. tomorrow, half an hour each?

Mr. Breough: I have a little trouble. I would rather do it at the end of the day. I can say nine o'clock, but it depends on how many people kill themselves on the parkway in the morning. I would prefer, if you could, to put it at the end of the day.

Mr. Chairman: I am afraid if we put it at the end of the day and then we get a couple more, we are getting ourselves into a box.

Mr. Breough: Or at the end of the morning; I have no problem with that.

Mr. Rotenberg: We have heard from Metro cabbies and we are hearing from more tomorrow. One of the requests is from Mississauga cabbies who have a totally different point of view from what we heard this morning. Whether we agree or disagree, I think we should hear from the other side in that particular situation.

Mr. Breough: I agree we should hear them.

Mr. Epp: What about 9:30 a.m.

Mr. Chairman: Meet at 9:30 a.m. and try to push them through quickly.

Mr. Breough: I just have one other area on which I want to do a bit of questioning. My reading of this act, and what I understand is current practice, is that there are a number of tavern owners who in good faith went to municipalities and sought things like building permits to improve a particular premise; they spent that money in renovating their premises, in some instances less than a year or so ago, with the understanding that it may

have been to accommodate an nonconforming use, but that has always traditionally been something which was acknowledged by municipalities.

They have in the last year or so gone to considerable expense to renovate premises and are now beginning to find, notwithstanding what was said a year or so ago when the municipality was granting a building permit, that the municipality is now fairly actively trying to put these people out of business. Do you have clients like that?

3:20 p.m.

Mr. Kolas: Exactly. I have the Aristocrat Restaurant at 3900 Sheppard Avenue East. He is just completing renovations to the extent of \$100,000 and they found out about this proposed legislation after commencement of the renovations. They employ approximately 50 people at that one location, pay taxes of at least \$150,000 a year.

That licence could go under this proposed legislation because they are across the street from a residential area I believe. Although they are zoned industrial right now, there are residences across the street. That licence could go.

Mr. Breaugh: I would have some concerns, quite frankly, about taverns operating in residential areas. The only hook that I have on that is that planning matters often are not as neat as you would like them to be and you often do get businesses which have been in place for a long period of time and the neighbourhood changes or whatever.

But is it not a more rational way to deal with this in the normal way that we deal with any other business? That is to say, we have an official plan for a community and zoning bylaws and as much as we can under those two procedures we will attempt to regulate the growth of our community; if there is a nonconforming use we will attempt to ameliorate whatever problems there might be in the neighbourhood, but that really should be the extent of the exercise.

Mr. Kolas: Obviously I agree with you, because terminating or nonrenewal of a particular licence that somebody has relied on is a form of confiscation or expropriation of property. They very quickly will lose everything if their licence is refused because of a particular situation in a municipality.

My suggestion to you is go ahead and regulate the particular businesses, give the local municipality the power to regulate perhaps signs and displays, but certainly do not put them out of business.

Mr. Rotenberg: With respect, to refuse a person a licence to have strippers in their tavern does not put them out of business. They can still have their liquor licence, they simply cannot have strippers any more.

Mr. Kolas: Certainly that is true to that extent.

Mr. Rotenberg: The adult entertainment part is not their whole business. Your clients have a restaurant and a tavern. It is just the entertainment part which would have to be changed.

Mr. Kolas: Yes, that is certainly true. However, as Mr. Breaugh said, many of them have made some fairly long-term plans in this regard and have spent a lot of money and for a licence to be denied would--

Mr. Breaugh: I would accept part of what Mr. Rotenberg says if I saw it being applied across the board. That is to say, if you say that whatever you might define as an adult entertainment package that is offered any place is not going to be allowed, and if you say the Royal York can stay in business but it cannot run shows which have dancers, or the O'Keefe Centre can also stay in business but it cannot have the National Ballet doing any kind of dance on a given evening which might be interpreted by anyone in our community as being sensuous in nature. It seems to me if you did that across the board--but those two things would be considered ludicrous I would think. That is my problem.

One final question to you. It seems to me that if we proceed with this type of legislation there will be a number of people who you represent who have put a substantial business at great risk, and they will lose, in fact, the business itself, they will lose volume of business, and it seems to me quite a logical sequence to that that you would want to represent those people in some kind of litigation, probably against the province of Ontario, or more specifically against various municipalities for damages.

It strikes me that if I had spent a couple of hundred thousand dollars renovating a business at the okay of a community last year, and this year they came along under the provisions of this or any other act and put me out of business, I would sue them for their eye teeth. Would that be the intention of your group?

Mr. Kolas: To be perfectly honest we have not discussed that, but I tend to agree with you that they would not take the loss of their life savings lying down.

Mr. Rotenberg: Let me just follow that up, because this legislation has been in force for the past four years and Metro has required licences. Have there been any attempts to put any of your clients out of business or just to regulate the way they have performances?

Mr. Kolas: With respect, sir, this legislation has not been in force--that is, the power to refuse a renewal of a licence has not been enforced. There has been a limitation on the number of licences to 60-odd licences, but the persons and the establishments that were granted licences, provided they complied with all the relevant laws, were able to renew them, and have renewed them, even though municipalities have changed their zoning bylaws or defined areas in which to put adult entertainment parlours. None of my people has been put out of business, because this prohibition or prohibitory section was not in effect.

Mr. Breaugh: Just let me conclude with a question to the parliamentary assistant then.

It seems fairly clear to me that under existing legislation and Bill 11 everybody is going a good step past regulation and is well into prohibition, limiting the number of licences which could be issued in a given community, setting a licence fee which is at least punitive, if not prohibitive, and threatening to change several other things that most businesses would take as being almost written in stone.

That is to say, if I run any kind of a business and I come to my municipality and I ask for a building permit and they give it to me, I am operating on the assumption that it might be a nonconforming use or whatever, but that mine is a legitimate business and I have a right to expect that I am not going to be put out of business in the near future by any means. Is this not a fairly clear demonstration where it has gone past regulation and into prohibition?

Mr. Rotenberg: I would agree with you that the regulations in Bill 11, which are virtually the same as the regulations in the previous act, do go to what you have indicated. They have given the municipality more powers than under the rest of the Municipal Licensing Act. I say that, and this is the question I have asked. On the basis that the existing legislation has given this power--this does not in any way take away from what I said earlier in answer to someone else's question--in the light of what has come up today and everything else, we are going to have to take another long hard look at this whole section on adult entertainment parlours.

I am prepared to do that. I am committing myself to having another long hard look at it. I am not saying what the result will be. With maybe some minor nuances, Bill 11 is not that much different from the existing legislation.

Mr. Breaugh: I would even take the point that a tavern, with or without a rock band or a stripper or whatever, is not a pleasant thing to have in the middle of a residential area. I do not know of any quiet taverns, at least in my community. But I think it is accepted that if that is a legitimate zoning use, if it is a legitimate business, if it is recognized, licensed and regulated by the province and a group of other folks as well, you do not have a right to prohibit, restrict or put them out of business.

Mr. Rotenberg: With respect, I do not think the municipality can put them out of business in that sense. They cannot take away their liquor licence or prevent them from having a tavern or a restaurant. All they can do, in effect, is take away that part of the business which is considered to be adult entertainment. In this case they can say to that place, "You can't have strippers any more," but they cannot say, "You can't have a tavern or a restaurant any more."

I understand that, because of the competition around Metropolitan Toronto, if one tavern has a stripper and one does

not, the one with the stripper is going to do a hell of a lot more business than the one without the stripper. That is one of the problems. But this does not give the municipality the power to put them out of business. It gives them the power to take away their entertainment. There is some difference, I think.

Mr. Breaugh: I agree that there are differences. I have just one final question. Is it really the intention of the government of Ontario to allow to continue a kind of unseen censorship approach? I do not like the censorship approach as we use it for most--

Mr. Rotenberg: I understand. That is the question which I am committing us to review. That is the guts of the question from both the tavern owners and the theatre people who are here before us.

Mr. Breaugh: Let me question you, then, on your intent when you drafted this legislation; because you seem to be accepting what is now the practice.

I am not an advocate of censorship, but at least with the Ontario Censor Board I can clearly identify who is doing the censorship. If I am someone who is making or distributing film, I have an appeal process which is reasonably open. At least I can find out what the appeal process is.

In all of this, that is not true, and I am concerned somewhat that, even if you are advocating censorship here, in some form or other, at the very least there ought to be some fairness involved in it. I am an advocate of using the judicial system. We have a whole system of courts out there, lawyers ready to argue and judges willing to hear. If we are going to try to apply some censorship criterion to anything that is the one we use, because at least I know what the system is. It strikes me that this bill is promoting a system of censorship which is unseen. I find that particularly obnoxious. Was that your intention?

3:30 p.m.

Mr. Rotenberg: As I indicated, the bill in 1978 was not done by our ministry but by the Attorney General. One change in Bill 11 which was not in the 1978 legislation is there is an appeal. The council that makes the bylaw must set up an appeal committee which operates not politically but operates under the Statutory Powers Procedure Act.

Members of council could be appointed to that committee by council, together with other people who would have to sit and hear an appeal from a refusal of licence or refusal to renew a licence or suspension of licence. Because it is under the Statutory Powers Procedure Act, the actions of that committee under certain circumstances can be appealed to the courts.

Mr. Breaugh: It is your contention then that form of an appeal process is a legitimate way to decide matters such as this.

Mr. Rotenberg: I am not saying that. I am saying it is an improvement over the existing legislation. I am not saying necessarily, in the light of the discussion, whether that is the final form our recommendation will be, but I am saying it is some improvement to those people complaining about what is now in place where there is in effect no appeal from a political decision of a council or a licensing commission.

Mr. Kolas: I just wanted to make one more point. With due respect, I disagree with the member that the power to refuse a renewal had been in place in the existing legislation.

It is my understanding that the Metro legislation and licensing committee got advice from its council that they put in a section specifically like clause 4(2)(c)--that is the power to define permitted and nonpermitted areas--and thereby, through its licensing power, to further limit numbers or to take away existing licences, because the municipality did not have the power to take away licences or to refuse renewals under its existing zoning bylaws. That is, they had the legal nonconforming use exception.

Mr. Rotenberg: The power to limit the numbers is in force now.

Mr. Kolas: Oh yes, the power to limit the numbers is in force, but not the power to not renew because of this new category called permitted and nonpermitted areas of operation. That is what particularly frightens my clients.

Mr. Rotenberg: If you look at section 222 of the act, I think those powers are there.

Mr. Kolas: Thank you very much, sir.

Mr. Chairman: Thank you, Mr. Kolas.

The next group is from the Ontario Tavern Association. Messrs. Perlis and Atlin.

Mr. Atlin: And Mr. Cooper.

Mr. Chairman: Would you identify yourselves from east to west?

Mr. Atlin: Actually by reason of the shortness of time there has been in putting our submissions, we have not covered everything that has been discussed. I do not feel it necessary to reinvent the wheel and go over everything, but I should point out that first of all and very distinctly the adult entertainment people who are in the Ontario Tavern Association feel very strongly that it is unfair to sort of categorize them with the body-rub situation that exists.

The tavern association people are all licensed under the Liquor Licence Act, they are all regulated under the Criminal Code and they feel that they are legitimate business people who, in many instances, have been carrying on the types of businesses they

are now carrying on for 20 years and more. With the legislation that came in in 1978, they felt threatened. They have been able, so far, to live with it.

I might say, particularly, that we agree that it is extraordinarily difficult to differentiate between when adult entertainment becomes legitimate theatre and when legitimate theatre becomes adult entertainment. They are performances, and they are performances to our community standards. These things do not come out of the air, and people enjoy this kind of entertainment. That is why it happens.

I have submissions that are of general import, I believe, and I would ask you to follow my submission fairly closely. Our submissions will concern three main headings here, and each one is of concern to the general public, not only to the association.

First is the right to refuse a licence, even though the business has been carried on in the location at the time of the bylaw coming into force. That is, the legal nonconforming use, because despite what has been said there is a very significant change in legislation that, if it has not been effected, is going to keep people like me very busy and hopefully prosperous for a long time, because there has been set into the legislation a conflict that will have to be litigated. I am quite confident of that, because it has been litigated elsewhere.

Second, the right to fix licensing without limitation is a right to prohibit, not a matter of licence.

Third, we have heard discussion about the right of appeal. The current legislation, in our view--I cannot find the section that sets up this appeal board; I might have missed it but we cannot find it. In addition, you will find that the legislation, as compared to the legislation that previously existed, excludes an appeal to the divisional court, rather than increases. They are quite specific.

Dealing with my first point, the right to refuse the licence, if you look at subsection 110(7) of the old Municipal Act--of the current act--it reads, as I have set out in my submission, "Notwithstanding subsection 6, a board of commissioners of police or a council shall not refuse to grant a licence with respect to the carrying on of any business by reason only of the location of such business where such business was being carried on at such location at the time of the coming into force of the bylaw requiring such licence." That was specific and carried in the legislation.

The effect of this subsection is to permit what is known, technically, as the legal nonconforming use. By reason of this clause, if any business was carried on before the passing of the bylaw, it would not be legislated out of business by reason of the passing of a zoning bylaw, or other bylaw, which would now make the business illegal in that location.

Compare that with paragraph 2(4)(h)4 of the new bill. That reads, "4. The council shall not refuse to grant a licence with

respect to the carrying on of a business by reason only of the location of such business,"--okay, but here is the exception--"except that the council shall"--not "may" but "shall"--"refuse to grant a licence where the location of the business proposed to be carried on is such that the carrying on of the business would be in contravention of a bylaw passed under section 39 of the Planning Act"--or whatever the section will be, "...or of a regulation made...under...the Parkway Belt Planning and Development Act, or...the Niagara Escarpment Planning and Development Act."

What we have is a section that says council shall not refuse the granting of a licence with respect to the carrying on of a business by reason only of the location of such business, but it goes on to direct--it says the municipality must refuse the licence where the business would be carried on in contravention of a bylaw passed under section 39 of the Planning Act.

My interpretation of that is if that section means that if a bylaw had been passed then council would have no alternative but to refuse the licence, even though the business's operation predated the bylaw not being contravened.

Mr. Rotenberg: Mr. Atlin, our lawyers totally disagree with that interpretation.

Mr. Atlin: I might say our office has discussed this with two sections of your legal department. One says, yes, he agrees with you. The other, I will give you his name afterwards, says, "My God, you are right."

Mr. Rotenberg: Let me undertake to you that if you are right, we will change this act, because it is our intention that section 4--

Mr. Atlin: Preserve the legal nonconformity?

Mr. Rotenberg: Preserve the legal nonconforming use.

Mr. Atlin: You will get rid of me a lot faster with that undertaking.

3:40 p.m.

Mr. Rotenberg: Except that there is a notwithstanding clause for the adult entertainment parlours, but the general section--

Mr. Atlin: That is the same notwithstanding clause that the--

Mr. Rotenberg: There is no question it is our intention that the general section will allow legal nonconforming uses to continue, that licensing cannot, except the notwithstanding clause, remove a legal nonconforming use.

The lawyers have pointed this out to me as well and if the opinion is that subsection 4 has to be changed to make it clear,

we will change it to make it clear. If there is a difference of opinion, my attitude is that, even though some lawyers say it is fine the way it is, let us make it totally clear so no lawyer will disagree with us.

Mr. Atlin: You are closing a lot of momma and poppa grocery stores if you do not do it.

I do not think that I should add anything more. My written submission is there. But the problem is when you read something that the--

Mr. Rotenberg: If it needs fixing, we will fix it. Okay?

Mr. Atlin: All right.

The second submission is the right to fix licensing fees without limitation. That power is give in clause 2(4)(k) of Bill 11. This has been pointed out before, but the fee in subsection 2(5) says the licence shall not exceed \$10 per annum or, where an inspection is required, it can go up to the magnificent sum of \$25.

However, when it comes to adult entertainment, as an alternative subsection 2(6) opens the doors absolutely and says as an alternative to--I am sorry, it is clause 2(6)(a), "Subsection 5 and this subsection do not apply to fees fixed or paid or expenditures made in respect of a bylaw for the licensing of a business to which subsections 4(1), (2) or (3) apply."

As a result of these sections being read in conjunction with one another, local council shall now have the power to fix fees that are paid in order to obtain the licence. The bill contains a stipulation on the maximum fee to be charged by these councils for all businesses, except for body-rub parlours, adult entertainment parlours, cabs and buses--and, again, I urge you to take those businesses out.

I do not think the body-rub business is a business. That was something that was a front for the most part for prostitution and we all know that. That is not the case in the case of the adult entertainment. It is open and it is before the public and these people who are legitimate business people, for the most part, family people, resent bitterly that they are classified in the same way.

It is submitted that you can create a situation where local council can charge the owner of an adult entertainment parlour a licence fee which makes it totally impossible to continue the operation of business. It is the prohibition section. The open-ended licence fee in the municipality is simply a tax. You can tax the offending licensee out of existence and we have a total inconsistency in that each municipality sets its own fee.

Rather than having consistent legislation throughout the province, what you are doing by this is giving to each municipality the right to say: "We will grant licences. All you have to do is come up with \$20,000 a year." You effectively will put the people out of business. A hell of a lot less than that

will put them out of business. What you have is a total inconsistency in the legislation.

The third matter I wanted to speak to is that in the Municipal Act, subsection 110(11), there is a subsection which deals with the granting and refusing of licences and the powers that they are not bound to give or refuse these. Specifically within the section, it reads, "Notwithstanding subsection 6, the decision of a board of commissioners of police in refusing or revoking a licence is subject to an appeal therefrom in accordance with the rules of court to the divisional court, whose decision is final."

That is in the old act. We have hunted high and low and it is certainly not in the new act. This can only lead one to believe that there is a concerted attempt to give to the municipalities virtually unrestricted powers by which they can prohibit rather than license or regulate.

Mr. Rotenberg: If I might, just for clarification perhaps: that appeal procedure applied only where licensing was done through a board of commissioners of police and not where licensing was done through a council or through a licensing commission as in Metropolitan Toronto. That appeal procedure is only from a ruling of a police commission, it is my understanding.

Mr. Atlin: That may well be. But again it is a restriction. I am not saying that is the only thing, but it gives the tone of the legislation if it is intended that there be a right of appeal, as you have indicated in your previous comment. You commented that there was to be a special--

Mr. Rotenberg: There is a right of hearing in section--where is it?

Mr. Atlin: That is a right of hearing; that is not a right of appeal.

Mr. Rotenberg: Whoever makes the rule has a right of a hearing before a committee of council.

Mr. Atlin: What you are saying is that there is an appeal from the inspector who--

Mr. Rotenberg: That is where the original refusal of licence will be, the council. That is where it is; the council as sitting under the Statutory Powers Procedure Act, not sitting as a political body, or a committee appointed by the council.

Mr. Atlin: Even there, the divisional court in that case can only deal with questions of law. They cannot go into the factual reasons for the granting or refusal of the licence.

Mr. Rotenberg: You are correct, yes.

Mr. Atlin: It is a very restricted right of appeal, so you have a very narrow area of appeal and highly restrictive legislation. The very least that should be done is that the appeal

procedure should be opened up so that again you can have some consistency of community standards.

You have been over our concerns. We do not frankly think that the sections should have carried over from 1978 into this legislation but they are substantially the same sections. There has not been a lot of change. What there has been, however, has been, in effect, a taking of the power and giving it to the municipalities so it can be so unequally administered throughout the province.

I concede that there could be different standards in different sections, but the machinery for putting legitimate people out of business is there and is of great concern. If you have any questions, I will be pleased to try to answer them.

Mr. Breaugh: As you heard previously, I have some difficulty with the way this has all evolved. One of my problems is that I feel rather badly that at one point what appeared to be a rather straightforward problem in downtown Toronto was dealt with by provincial legislation and that somehow seems to have extrapolated itself into a whole different field.

Mr. Atlin: My understanding is, by the way, there are now only three adult entertainment parlours on all of Yonge Street.

Mr. Breaugh: That is my problem. The first one is this class location, lumping people who are running taverns into this broad category of adult entertainment, it being a little loose in its definition and even looser in its application.

It seems to me that one reasonable way to proceed is to redefine that so that, if we have a tavern, which is in my view if anything over-regulated at this time, that whole classification would be removed from this section. I wonder if that would go some measure to resolving your problem.

Mr. Atlin: I think the licensing and the inspection that there is going to be should be with some consistency and there should be some other body rather than each municipality at the particular time changing the standards that it goes by, but that is not the decision of the Legislature so that I--

Mr. Breaugh: If, as we go through this, we made that distinction so people who operate taverns at least know what the rules are and that the rules are consistent across the province, then that would seem to me to alleviate some of your concerns. Would it not?

Mr. Atlin: Yes, that would certainly--

Mr. Breaugh: And if somebody thinks that what is happening in that tavern is an obscene show, we would apply the same rules to them as anybody else and go off to court and decide it.

3:50 p.m.

Mr. Atlin: Exactly. That is exactly our submission. Some of these places have been in operation and people have spent great sums of money and have operated within the law without complaint for 20 years. We are not talking about a group of irresponsible people who have come in to destroy communities.

Mr. Breaugh: That is the first point I wanted to touch on. The second one was the fee, because a number of people have spoken to me about current practices.

Quite frankly, it seems clear to me that fees are being set at a level which are meant to at least inhibit severely, if not outright prohibit, tavern owners from continuing in operation and implicit in this legislation and in the existing stuff is all kinds of references in there to limit the number of taverns and all of that.

It seems to me to be an awkward mechanism at best and I wonder if it is your opinion that section of the act which deals with the fees needs to be restricted in nature severely from how it currently is drafted.

Mr. Atlin: Again, with great consistency the legislation sees fit to say that for ordinary licences you can charge \$10 to \$25. For these licences it is open-ended. If the Legislature sees fit to set a licence fee, then it should be a public licence fee that is set, is known and perhaps is set with a maximum for the province so the people who are in the business know what they are facing. It should not be permitted to be a weapon to put people out of business.

Mr. Breaugh: One of my problems with the fee stuff is that the premise in here seems a fairly legitimate one, that if you have additional costs for issuing these licences, you will be able to recover that.

My problem is that the practical reality, particularly in places like taverns, is that it is not uncommon to have in the tavern a couple of cops sitting around all day long trying to decide whether this is obscene or not, a liquor inspector or two strolling about, a health inspector, and now we are going to add to that list someone from the municipal licensing board sitting around as well.

I am wondering at what point we have to call a halt to this. Just exactly how many people can we pay to sit around taverns all day and what the hell are they doing there?

Mr. Atlin: It seems to me that if you have some consistent licensing procedure through the province, you have to have that, to take care of that. You will have a limited number of people who have that responsibility.

Now the responsibility is spread and there are a number of people who sort of have the same function or can have the same function and are coming in but, if you set the fee so it will reasonably cover the cost of inspection, you cannot quarrel with that. If it is a consistent fee, we cannot quarrel with that, but

an open-ended fee that, as you say, will support a small inspection industry in our establishments is something that is--

Mr. Breaugh: For example, I do not have any problem with a building inspector going to a tavern and deciding whether the building is going to stand up or not. I have no difficulty with that at all, or even with the fire marshal going in there. I get into a little bit of a problem when I see police officers sitting around all day deciding what is going on here, will they prosecute or will they not, but I envisage something which all of us would look at and say is just plain stupid, not to mention pretty expensive.

What about the appeal process? The parliamentary assistant has offered to you what he proposes to be, I guess, under the drafting now, a reasonable appeal process. It strikes me as a bit nuts, but I would like you to elaborate on that.

Mr. Atlin: It is not a judicial appeal. It is an appeal to council or an appointed board, who are really the same people. They hire the licensee and they hear the appeal from him. It is not an independent appeal and that is the key. The idea of any judicial appeal is independence.

You are going to have someone who will stand back, who does not owe anything to the municipality, who is not an elected representative, with all respect, he is someone who is going to decide whether there has been a fair dealing in fact in law.

That is why it is absolutely essential that the appeal not go to somebody who is part of a municipality, but goes to an independent source. Otherwise, you are appealing from yourself and that is a very pleasant kind of appeal to hold.

Mr. Breaugh: One final thing for you; we have had a little argument here between yourself and the parliamentary assistant about nonconforming use. One of the things which I found a little unusual in what he said was that he was all prepared to accept your argument, that they are not going to ban the legal nonconforming process, that you could operate a business if it was there prior to some zoning bylaw going on, you could still operate. But I thought I heard him say that was going to apply to every other business except taverns. Would you like to address yourself to that one?

Mr. Atlin: Mr. Cooper raised that with me and I let that go by because I was going to raise it now. That is a problem, because that is what the legislation seems--although if we could get into a courtroom I am not sure a court would sustain that legislation--but the legislation--

Mr. Rotenberg: With respect, what I said was that in the general part of the legislation it is the minister's intention, and we will make sure it says so, that legal nonconforming uses will not be allowed to be excluded under general licensing.

Now there is a section of the act which says that section does not apply to adult entertainment. I said we were going to

review that. We did not commit ourselves to say that we would take the exemption from the nonconforming away from the adult entertainment. It is not the tavern part; it is the adult entertainment part.

From the general point of view I agree with Mr. Atlin that we will clarify the general part of the bill. We will be coming to a decision whether adult entertainment parlours will be exempt from that or not.

Mr. Atlin: With respect, that is really discriminatory legislation perhaps at its worst because you have people here who have committed their life savings long since. Mr. Cooper has had his establishment for over 20 years as far as I know and I do not want to get into names. He has never had any offence of any kind, and here he is being threatened with legislation which says that someone is going to be able to pass a bylaw and next week he is out of business.

Mr. Rotenberg: No, with respect, they can pass a bylaw which says he cannot have adult entertainment in his tavern. It does not say he will lose his tavern.

Mr. Breaugh: That is akin to saying McDonald's can stay in business but they cannot sell hamburgers.

Mr. Atlin: Exactly, because therein lies--

Mr. Rotenberg: For 20 years he has not had adult entertainment.

Mr. Atlin: Yes, he has.

Mr. Breaugh: I would say that, in a position of a tavern as an example, I do not know what anybody else's definition of adult entertainment is, but ever since I was big enough to sneak into a tavern, I considered that to be adult entertainment. I do not know whether they had strippers in the old days, but ever since taverns existed, they were for the purposes of adults gathering and entertaining themselves. They may be telling lies to one another or they may be watching a country and western band or they may be watching a football game, but it is clearly adult entertainment, and I have some grave problems with that.

Let me ask you about this nonconforming use. It seems to me that is so firmly established in Canadian law, this legal nonconforming use, it has been tested in the court so many times that any attempt by anybody to get around that is a waste of everybody's time.

Mr. Atlin: That is not necessarily true. We were looking at the cases this morning just to see what had happened in British Columbia and in Ontario in 1943, Toronto and Preston. In both instances the court said if the Legislature really intended to do away with the nonconforming use, they cannot.

Mr. Rotenberg: You can do it under a building bylaw for

instance. If you change the building bylaw you can force someone to conform in certain situations.

Mr. Atlin: But if you were existing--

Mr. Rotenberg: If you were existing you could force someone to bring the building up to property standards.

Mr. Atlin: When they make any changes, but generally speaking, the cases say that if you really want to and you are specific enough, you can force--

Interjection.

Mr. Atlin: Yes, that is right, and it has been done and it has been so held.

Mr. Breaugh: It is fairly clear that if this legislation stays as it is currently drafted, you are going to be off to the courts testing it.

Mr. Atlin: I am sure that some municipality will try to use it and, if some municipality tries to use it, some guy who is losing his life's savings is going to try to fight it.

Mr. Cooper: I think the urgency of the original intent of the legislation, the body-rub part, has really been taken care of. The Yonge Street problem has been cleared up for the last three or four years. I have been there for 20. What concerns all of us in the tavern business is this legal nonconforming use. That is the real killer.

4 p.m.

For the province to contemplate giving the local fellows the power to say we are out of business the next week is a horrendous power. It is true that possibly the reason we are here under separate umbrellas is that the North York people are smaller restaurants. In Ontario there are several hundred large lounges which are licensed to sell liquor only and food if you want it, but we are in a business where we have entertainment. If these licences were pulled, there is no question that 80 per cent of them or all of them would fold.

I am talking about places that are not licensed as restaurants or dining lounges, for instance, but are licensed as lounges, which one of my premises is. To give this power to the local councils is because originally there was a lot of panic, and rightly so, about the body rubs.

The other point is that the control of these licences is already in the hands of the municipality under the zoning bylaws. In Toronto, for instance, every adult entertainment parlour is zoned right out of Toronto into the stockyards. They are zoned C-4. Nobody can open another adult entertainment place in Toronto.

Etobicoke has certain laws and Scarborough has certain laws that have pretty well zoned everyone out of business. I feel quite

sure that if Bill 11 is passed with this legal nonconforming thing in, the powers that be in the city of Toronto would put everyone out of business in a matter of a week or two. They have shown that in passing the original C-4 zoning.

Scarborough has everyone zoned into large 50-room hotels. You can realize a large 50-room hotel without any necessity of adult entertainment. They have zoned them out. That is the problem. The fact remains that there will be no additional adult entertainment parlours because of the zoning. So there is a control.

As regards the other controls, as I have repeated many times, if there are problems with nudity and certain indecency laws, there is a Criminal Code. The police will charge you. If you are convicted under the Criminal Code under an indecency section, the Liquor Licence Board of Ontario will pull your entire licence for a week or two or a month or for however long they see fit.

We certainly have all kinds of regulations that regulate us, but the frightening thing is this censorship you would give to certain local councils. It is an absolutely frightening thing to have your licence at the beck of any council that sees fit to say, "Okay, Yonge Street is all right for licences, but anywhere else is not." That is the thing.

It is a principle under the right to do business and to make a living in this country that if someone has been in business for five or 10, or two or three or four years, you should not really have the right to come along and say, "Okay, we do not want you in business any more." I can appreciate them going along Bloor Street and saying, "We do not want any more condominiums here," but I would certainly be horrified if they said to tear down all the condominiums because they want to make it all commercial.

That is what this power is that is coming on. I can appreciate they want no more adult entertainment parlours. Fine. But I cannot really understand why anyone would even dream of giving the local councils this power to say you are out of business next week.

Just a few figures off the top of my head, and they may be superfluous: There are 50,000 to 100,000 people a week who patronize all these licensed establishments in Metropolitan Toronto. In Ontario, there must be a couple of hundred thousand a week who go to see this kind of entertainment. Although it might not be appreciated by you or the next person, nevertheless, there are that many people who enjoy and watch these types of shows. Everyone cannot go to the Imperial Room.

Mr. Breaugh: That has been my problem with this. When I look at this, the thing I find wrong with the legislation is particularly section 4. It is not saying that these tavern owners are doing anything illegal. You can go off to the court and some judge in some process will decide this is legal or illegal. It strikes me that this whole section gets into areas where it is not clear what is right and what is wrong.

It presumes some judgements. It does not provide a fair process. It goes past the regulation and well into prohibition. It seems to me that the whole thing is just morally wrong, so to speak. If you substituted any other words in place of "adult entertainment parlour," if you decided that for some reason we did not like ice cream parlours and you put that in, we would all go nuts. We would say it is insane. That is what I think is wrong with it. I hope that the parliamentary assistant pays some heed to the testimony that has been given here this afternoon about the unfairness that is in this.

If these things are illegal, let us pass the laws which say they are illegal and put them out of business. But it strikes me that none of us is prepared to do that. Some of us may make the argument that they are undesirable; I would not be one of them. I think we need to go at the drafting of this section of the bill with some intensity because I sense the intention of the government is not clear and needs to be clarified. At the very least you have to put some measure of fairness into this. I think this whole section of this bill has got a whole lot of unfairness built right into it.

Mr. Atlin: I just wanted to add one short thing: The strange part of it is that these people find themselves going to one place, one arm of government, and they are licensed and told: "You are legal. Go ahead, do that. You can have entertainment. You can do everything." Then another arm of government has been given the power to say: "No. That other arm of government that said you were legal was not right and therefore you can be made illegal even if we do not use the word 'illegal.' We can make you illegal in a number of ways, or make it impossible to perform."

Mr. Rotenberg: Do you believe it is legitimate for the municipality to license adult entertainment parlours the same as it can license every other business?

Mr. Atlin: Yes.

Mr. Rotenberg: Licensing by definition implies regulation and this is probably the key question I want to ask you: Do you think it is legitimate for a municipality to be able to regulate--not prohibit but regulate--adult entertainment parlours in that they may be able to set some rules and regulations as to what can and cannot be done, as they can do for licensing of tobacco shops or bake shops or driving schools and so on?

Mr. Atlin: I would have to say yes. There is some power to regulate but I think the line has got to be fairly closely drawn. It would have to be almost a legislative line because you are the verge of civil rights and wherever you get close to the edge, it gets a lot harder to deal with the situation.

It is very easy to deal with the smoke shop. They have been broadened, too. If you are going to regulate for health safety, that is one thing, but if you are going to censor, that is where the difference comes in.

Mr. Rotenberg: My solicitor advises me there have been some court cases in other provinces where regularly they said such things as, "You can be topless but not bottomless," or regulate certain things that cannot be seen; in other words, in effect regulating what that municipal council may call "community standards." Do you see any legitimacy for a Metro license commission or the Woodstock or Sarnia council not being able to ban adult entertainment parlours or prohibit them, but to be able to say that where they are, "These shall be the rules in our municipality and you must conform to these rules to get a licence"? Is there any legitimacy in that argument?

Mr. Atlin: Sure, there is legitimacy in the argument. The problem is that in the cases that you are referring to, pretty generally there has been a very broad power given to the municipality.

What I am suggesting is that there should be some limitation on the power of the municipality so that--do not ask me to give you the definition because I could not--but the fact remains that you really, with all respect, have to be careful that by so regulating you are not putting people right out of business. So there should be limitations on the regulations.

Mr. Rotenberg: We say in our general legislation, "You can regulate." We do not say "prohibit." I think that if someone put in regulations that were really prohibitory, the courts might strike the bylaw down. For instance, my understanding is that Metropolitan Toronto has a bylaw which says you cannot be bottomless. Maybe it is an unfair question, but do you consider that to be a legitimate regulation, if that is a community standard and if everybody in Metropolitan Toronto who has an adult entertainment parlour has to--

Mr. Atlin: Are you asking me whether it is my personal preference?

Mr. Rotenberg: In the industry you represent, is it legitimate for Metro licensing to set those kinds of regulations?

Mr. Atlin: We can live with reasonable regulations.

4:10 p.m.

Mr. Rotenberg: Just one other point, Mr. Chairman. It would seem to me, and I would like your confirmation, Mr. Atlin, that in your brief you have quoted subsection 110(7) in the old act. Subsection 222(3) says, "Notwithstanding section 110(7), a bylaw passed"--and they define areas of the municipality and limit numbers and so on. So it is our feeling that--

Mr. Atlin: I am sorry, which one?

Mr. Rotenberg: Subsection 222(3), formerly 368(b). It is our contention that in the present legislation the municipality has had the same power, in effect, to put out of business a legal nonconforming use. I am not saying it is good or bad. It is just our feeling that it has been there before.

Mr. Atlin: But subsection 110(7)--

Mr. Rotenberg: Yes, but look at subsection 222(3) of what I am passing you.

Mr. Atlin: Of section 222?

Mr. Rotenberg: Yes, which is "notwithstanding subsection 110(7)." It seems to me that this says that subsection 110(7) does not apply.

Mr. Atlin: My argument about subsection 110(7) was for general application, but I am saying what you did--

Mr. Rotenberg: I agree with you that we should write something the same as subsection 110(7). Do you agree with me that under section 222 that a municipal council now has the power to, in effect, put out of business a legal nonconforming use?

Mr. Atlin: You carried that section forward into the new section. We are saying that that power should not be there.

Mr. Rotenberg: But you agree that it was there before.

Mr. Atlin: Yes, that was there before.

Mr. Rotenberg: Some people are saying that is something new we are putting in the act.

Mr. Atlin: No, no. That is not something new.

Mr. Rotenberg: I am not saying it is right or wrong; I am saying it is not new.

Mr. Atlin: That is why I said, when I opened my submission, that we have tried to check one against the other.

Mr. Chairman: Thank you. That being all of the questions, we thank all of you for your presentations. We will get on to the next group, the aggregate producers, if we may.

Gentlemen of the committee, may I point out that of the two groups which I mentioned a half hour ago wish to meet with us, one will not be making an oral presentation and one may be on Thursday afternoon. Both will be making written presentations. So it will be at 10 o'clock tomorrow morning that we meet, not 9:30 a.m.

The Aggregate Producers' Association of Ontario: there are two of you.

Mr. MacFarlane: Yes, Mr. Chairman.

Mr. Chairman: Would you identify yourselves, please?

Mr. MacFarlane: Yes. My name is C. B. MacFarlane, and I am here as counsel for the Aggregate Producers' Association of Ontario. I have with me a member of the executive, Mr. Hardy Main.

Mr. Chairman: Members of the committee, it is the exhibit with a blue cover, exhibit 13. We are all set. Go ahead, sir.

Mr. MacFarlane: Mr. Chairman, the Aggregate Producers' Association of Ontario represents over 90 per cent of the tonnage of aggregates produced in the province, with 131 active members on the production side and 110 associate members who are involved in the supply of goods and services to the aggregate industry of the province.

Our chief concern is that the proposed Municipal Licensing Act, by greatly broadening the powers of regulation and management of businesses within the municipality, can clearly apply to the aggregate producers. We say this will result in an overlapping of jurisdiction and conflict between the provincial regulation of the resource and industry, and open a new area of municipal involvement.

The act itself defines businesses in very broad terms and clearly in the definition of business we are of the view that it would include aggregate producers within a municipality and under the provisions of the act they would then be subject to regulation, licensing, and management by the municipality, in the absence of any clear exemption in the act.

Although the proposed Municipal Licensing Act does have a provision stating that if there is conflict with any provincial statute or regulation that statute or regulation would prevail over a bylaw passed by the municipality, there is still a great deal of room for a municipality to deal with areas or new subject matter not covered by the provincial Pits and Quarries Control Act or the new Aggregates Act as proposed.

We have looked at the provisions of both the Pits and Quarries Control Act and the proposed Aggregates Act, that is, the provisions dealing with conflicts between the two, and we are still of the view that the problem could arise where there are new areas or overlapping areas of control that could result from municipal bylaws passed under the Municipal Licensing Act.

It is our submission that it has been province's position that it would like to see this important resource regulated and licensed at the provincial level and that the history of the amendments to the Pits and Quarries Control Act and the process leading up to the proposed Aggregates Act has shown that it is the province that wants to have paramountcy in the control of licensing and regulation of the resource and the industry.

Another principle which the province has sought to achieve is that of universality in legislation so you don't have a widely divergent set of municipal regulations and licensing controls dealing with a province-wide resource. That is why we have the provincial licensing and control provisions in the Pits and Quarries Control Act.

If, as a result of the Municipal Licensing Act, we have a new set of regulations that permits controls emanating from

various jurisdictions in the province, we are going to an erosion of the concept of universality. We are going to see greater costs for both the industry and consumers of the resource.

To conclude, we would like to see, first, a provision in the act clearly exempting the aggregate producers which are licensed and permitted by the province under the Pits and Quarries Control Act from the provisions of the Municipal Licensing Act and, second, those aggregate producers which are licensed and permitted under the Pits and Quarries Control Act exempted in the regulations. We do feel it is important that exemption be set forth in the act in subsection 2(4) so that no bylaw which is passed by the municipality would then apply to the producers which are licensed by the province.

Those are my submissions. Mr. Main and I would be pleased to entertain any questions.

4:20 p.m.

Mr. Stevenson: There are certain similarities here between the concerns of the Aggregate Producers' Association of Ontario and those expressed by the Canadian Manufacturers' Association. You were talking about reviewing some of the contents of the bill to try to clear their concerns as far as manufacturing and industrial facilities within municipalities are concerned. Would some of your thoughts relating to them apply to the aggregate producers as well?

Mr. Rotenberg: In order to answer the question, I would ask the delegation: in your business do you deal with the public, with consumers, or do you deal generally only with highway contractors, builders and that sort of thing?

Mr. Main: Predominantly with contractors due to the nature of our products; the contractors put them in place, but we do deal on a point-of-sale basis in a limited way.

Mr. Rotenberg: The reason I mention that is when we see (inaudible) before us, one of the things we are considering is narrowing the definition of "business" in some way--and I am not giving you a legal definition--to those businesses not necessarily retail but those which deal with the public. By narrowing the definition, it may or may not exclude all or some of the members of your association if we did that sort of thing.

Mr. Chairman: May I ask the question in a little different way? What percentage of your tonnage would be on a retail basis compared with that to highways, etc.?

Mr. Main: It would be 10 per cent or five per cent.

Mr. Rotenberg: The other thing I would like to ask the solicitor is if he could give me some concrete example. The basis of your presentation was sort of a fear of what the municipalities might come and do to you. I can understand that, but given the fact that you are quite well regulated under the Pits and Quarries Control Act and the Aggregates Act and so on and that the

municipalities cannot do anything to you which conflicts with provincial legislation, can you give some examples of the type of thing you fear municipalities might do to you if they are given the power under Bill 11?

Mr. MacFarlane: One example in the bill itself is insurance. It could impose insurance regulations on the aggregate producers.

Mr. Rotenberg: Under the provincial legislation, do you not now have to carry some liability insurance, product liability or public liability insurance? If there is a provincial regulation and you have to carry insurance, then the municipal legislation cannot contradict that.

Mr. MacFarlane: It is adding additional requirements.

Mr. Rotenberg: They could not have a different insurance requirement than the provincial legislation.

Mr. MacFarlane: No, but they may be able in some of these areas to dovetail provincial legislation, impose additional requirements.

Mr. Rotenberg: I really do not think they can.

Mr. MacFarlane: They may try and come up with additional regulatory or planning schemes related to the industry.

Mr. Rotenberg: Of course, they can do that under the Planning Act, which is a whole different situation.

Mr. MacFarlane: That is correct.

Mr. Chairman: What about road maintenance? Will this change the road maintenance?

Mr. Main: I do not understand the question.

Mr. Chairman: The municipalities get more power under this act to license, regulate and so on. Will this give them more scope to increase the burden on the aggregate producer on the maintenance of the gravel roads?

Mr. Main: Yes, I think they would tend to do that. The municipalities generally regard us as something undesirable in a sense. They look for ways and means to restrict our operations. If they are able to do this, they seek these out.

Mr. Rotenberg: They would maintain the roads in and out of the quarries.

Mr. Chairman: And the municipal township roads.

Mr. Rotenberg: You mean that they use as--

Mr. Chairman: For example, if there is a job on highway 401 and they have to go to the nearest cloverleaf, and they have

to travel over two or three miles of township gravel roads to get to that paved cloverleaf, I am asking what this act will do for the enforced upkeep. Will it give the municipality any further clout to ask the producers?

Mr. Main: To answer that, the municipality may proceed, yes, as an opportunity or a device, to ask or require assistance from the suppliers in that regard.

Mr. Stevenson: I just wanted to add that the gravel industry and the problems associated with it have a fairly long history in several parts of the province. I suppose we could say they have had a somewhat rocky road.

Mr. Mitchell: No, don't say that.

Mr. Stevenson: Oh, well, it was a good try anyway. I think that over the last two or three years we have seen a fairly substantial improvement in the relationships among the aggregate producers, the municipalities and the Ministry of Natural Resources, and even with some of the groups that have expressed their concern fairly widely about the gravel industry.

I would be very reluctant to see anything come out of this bill that might undo some of the recent successes, let's call them, we have had in trying to improve those relationships. Until the new Aggregates Act comes into being, I certainly suggest that the ministry has a very thorough discussion with the Ministry of Natural Resources to make sure there are not some things in here that might cause some problems and, as I say, might undo some of the positive steps that have been taken in the last two or three years to reduce the problems that have been inherent in this industry.

Mr. Chairman: Are you perhaps referring to the Aggregates Act, in particular?

Mr. Stevenson: Yes. There have been procedures, let's call them, that have come into effect in recent times that are likely to be in the new Aggregates Act, which may not necessarily be law at the moment, but they are being followed and consultation is taking place between the industry and municipalities to a much greater extent than might have been done a few years ago. I would hate to see anything in here that would create some new problems.

Mr. Chairman: Mr. MacDonald, did you wish to--

Mr. Rotenberg: I just want to say to Mr. Stevenson, even if a municipality had the right to license a pit or a quarry and it put something in its licensing requirements that did not conflict with provincial legislation, because the Aggregates Act was not yet passed, and then subsequently the Aggregates Act was passed and there was a conflict, any of the municipal legislation would be wiped out, if it was in conflict with any new act the province did pass.

The whole purpose of the philosophy and the spirit of this act is it shall not conflict with provincial legislation. Of

course, there is a catch-all that I don't think the deputation wants to rely on particularly. There is a catch-all clause in this act that, in effect, the minister can veto any regulations of any municipality that he feels are not proper.

If some regulation came forward that was really against the spirit of the Aggregates Act, the minister could not allow that bylaw of the municipality. We do not want to rely on that, but it is there.

Mr. MacDonald: May I ask the witnesses, from your general knowledge, whether there are areas of deficiency in the existing provincial legislation or in the forthcoming Aggregates Act that would open the door to legitimate further regulation? I assume from your testimony that you would suggest there should be an amendment to the provincial legislation rather than going to the municipalities, so that you have universal application.

Mr. MacFarlane: Yes. Our real objection is to opening up nonuniformity in the regulation of the industry. We want to see a consistent form of regulation. As soon as you give the broad power, the legislative power that is in this bill to a municipality to regulate and license, it opens up a parallel scheme.

Mr. MacDonald: Okay. But let me go back to whether there is a problem. From your general knowledge, is there any contention that there are inadequacies in the current provincial regulations that would open the door to further regulation by municipalities if this act were passed as it now stands?

4:30 p.m.

Mr. MacFarlane: I don't think so. We have been working closely with the Ministry of Natural Resources and with various municipalities to try to come up with uniform regulations and standards. The Aggregates Act, which is proceeding, is a reflection of some of that co-operation.

What can happen is that municipalities can take away from the concept of uniformity that we feel should apply to all producers of aggregate in the province so they are treated fairly.

Mr. Main: If the gravel or mineral resource was found uniformly across the province and affected every municipality in the same manner, then some municipalities would not think they were being ill used. The case is that is not so. There are municipalities that feel they should not be subject to these things because they do not have gravel. If they do have gravel, there is a difference in the perception of regulation by the different municipalities.

It is a provincial responsibility to utilize this resource to its maximum in the most effective manner. It is for that reason that, as an industry, we prefer to see it administered by the province. It is in the universal interest.

Mr. MacDonald: Let me go back to the chairman's

illustration of an area. I can remember many instances of being told by people in various parts of the province that their county roads were being beaten to a pulp and 20 years of use were being concentrated into one or two years of use by the aggregate trucks coming out from the local quarry. I presume this act, as it now stands, might open the door to a municipality having an added levy for maintenance of roads. I wonder whether that is not legitimate, because it is not regulation in the sense of the mining of the resource, so to speak, it is just what flows from the excessive use of roads.

Mr. Chairman: What now happens, occasionally, is there is an agreement between the township and the county whereby a particular road is made into a county road. The county keeps it up; or it is paved by the municipality and there is taxing in its revenues to keep it up, so the county takes over that road.

That is occasionally done in agreement between the municipalities, and I believe the pit producers enter into the scheme with assistance, financial or in the way of materials, etc. I know that occurs. Whether it occurs all the time, or whether that's a danger with municipalities that do not co-operate, I am not sure.

Mr. MacDonald: But does this act, for the first time, give to municipalities the power to exact an added amount, at least from the pits and quarries people, for that purpose? Do they have to now, for example, without this act?

Mr. Stevenson: This is basically what is behind my comments. Certainly, the new Aggregates Act will have in it--at least, I fully expect it will have in it--certain amounts of money to go to the local municipality and to the county or region, whatever the case may be. I do not see any particular red herring in this.

However, it would be foolish for the ministry here to move ahead with this without consulting with the people in Natural Resources to make sure it does not give them some rights ahead of the Aggregates Act, which is not in place at the moment--and it is not very clear when it will be in place--to go ahead and do some of these things.

If the people in the ministry are not aware of it, there is a delicate relationship between the aggregate producers, the municipalities and the people who have to live in the area where the pits are. I am more concerned that this might come in and upset that balance and I think it would certainly be worth some time on behalf of ministry staff to check that out with the Ministry of Natural Resources and to be sure that there is no problem.

Mr. Rotenberg: There are so many situations such as pits and quarries where if we have general licensing legislation it may or may not conflict now or in the future, and I think the point I made earlier--and I just want to read a bit of a judgement from the Supreme Court of Ontario on a different matter which I think applies very much to this--was that where there seems to be a

conflict between municipal and provincial legislation, the provincial legislation prevails and the municipal legislation cannot add additional situations.

This is a case of a Mississauga bylaw and the Environmental Protection Act. This is the Supreme Court of Ontario. There are some phrases in here which I think are very interesting in the judgement and I will give this to you.

It says, "The bylaw and part V are in conflict." That is part V of the Environmental Protection Act I believe. "It is argued that it 'enhances' the procedures constituted by part V by, for instance, adding conditions to an application under part V."

Further, it says: "The bylaw is clearly intended to oblige an applicant to furnish plans and specifications in much greater scope and detail than required in part V. It is claimed, as well, that the bylaw serves different objectives than part V. Thus, it is said, the preamble to the bylaw reveals the township's objectives to include the avoidance of nuisances," etc.

The judgement goes on: "There is, however, no room for 'enhancement' where the two forms of legislation cover the same ground. This is made clear in the judgement of Morden J. A. in Mississauga."

Quoting another judgement, it says, "I think it is reasonable to conclude that the statutory provision in this relatively narrow field is of such a detailed and comprehensive nature that it leaves no practical room for the operation of the bylaw." This is the judgement: "In my opinion, the bylaw before us covers the same ground as part V. A conflict results. For the foregoing reasons, in my opinion, the bylaw should be quashed and the application allowed with costs."

In effect, this is something similar to what might happen if a municipality tried to bring in an act to add additional regulations to pits and quarries. I think the principle that is here before us of the Supreme Court of Ontario applies, that you cannot enhance or add additional regulation in a municipality to a field in which the province already has specific regulations.

This is the opinion we have and I think this case does somewhat go along this way. I can understand the fears of the unknown that the deputation has, but I think the courts have been quite clear that where a municipality tries to add on to provincial legislation, if the province sets out clear and distinct regulations that bylaw would be quashed.

Mr. MacDonald: Why open the door to give them the power--

Mr. Rotenberg: The point is, if we are passing general permissive legislation to a municipality to act, are we going to then go through all the provincial acts and say that they cannot be in this field or this field because there is a provincial law?

We put the general clause in Bill 11 saying they cannot be in conflict with provincial law. In our opinion that, in effect,

says they cannot get into the pits and quarries business because the province is in it.

But if we try to specifically pick out pits and quarries, what else would we have to pick out and say municipalities cannot specifically be in that business? I think we have said it generally and the courts have upheld it generally. I understand the concern, but my preliminary advice--and we are going to have a look at it--says these people are covered by the act and by other provincial legislation, therefore we have not got a problem.

If they do have a problem sometime in the future because of what we are saying in the act, we could amend the act, or probably even more to the point, if somebody tries to come up with some angle which may technically be legal but violates the philosophy of that act, the minister can just strike it down by a ministerial order saying they were not supposed to do that because the province is in that field.

Our preliminary opinion, we will look at it more closely, is that municipalities cannot get into what the deputation is worried they can get into, by the way the act is written and the way the courts have acted.

Mr. MacFarlane: Mr. Chairman, may I respond to that?

Mr. Chairman: Yes, go ahead.

Mr. MacFarlane: Just to reply to that point, I think we are really dealing with a situation where we have a class of business, if you will, similar to what the Municipal Act concept sets forth. It describes specific businesses which are to be regulated.

Here we have the aggregate resource, which is the subject of a regulatory scheme under the Pits and Quarries Control Act. If we do not exempt it in the regulations or in the act, then we are faced with putting that class of business into the realm of municipal control.

Based on the kind of co-operation that the industry and the province have had in working towards the new Aggregates Act, I do not think it is the intention of the Legislature to try to take a particular class of activity that has been the subject of provincial interest and regulation and place it back into the realm of municipal control.

4:40 p.m.

The case you cited dealing with the Environmental Protection Act may be a specific area that is well dealt with by provincial regulation, but in the regulation of pits and quarries and the resource in the industry it covers the waterfront: transportation, rehabilitation, land use, environment. I think there are still a lot of areas where a municipality could come in.

Mr. Mitchell: The gentleman hit on something, because I know that a lot of regions look at these pits and quarries or

aggregate producers and would like to get into the act. None the less, when the manufacturers met here earlier, I thought that Mr. Rotenberg, the parliamentary assistant, had indicated he was going to look at the possibility of some wording there. I thought it was indicated at that time that he would look at it not only from their point of view but also in terms of the broader aspects of the effects.

The question has been raised, and it is a legitimate one. He should look at the points raised in the brief in the light of what is coming in new legislation and so on and whether that is a particular area he wants to exclude from this legislation or make sure that it not the intent--to use his words--

Mr. Rotenberg: Mr. Mitchell, as I said, our preliminary opinion is that it seems they do not have a problem; but I also indicated that we were going to look at the overall definition, which may or may not help them. Certainly they have a legitimate concern. I cannot commit us to say we will satisfy their concern. I am certainly committing us to the fact that, since they have a legitimate concern, we will look at whether we can make it a little plainer, explicitly or implicitly, that they will not get caught up in matters that--

Mr. Mitchell: You know that you do go on to cover people who are covered by other provincial legislation, such as the plumbers and that sort of thing. Here is a situation that at this point again is totally governed by other provincial legislation.

Mr. MacQuarrie: There is no question that very significant strides have been made in the governance of pits and quarries and their operation in the past few years, but it seems to me there are about three areas that municipalities are still concerned with. One is, particularly where a pit or quarry is operating close to residential communities, the hours of operation; a 24-hour operation can be quite a distraction to the peace and tranquillity of the neighbouring community.

The other area is blasting. It is true that blasting is supposedly governed, but quite frequently charges get away from the people handling them and, depending on atmospheric conditions and a whole lot of other things, one blast with a certain amount of charge can be quite different from another blast using the same amount of charge with different atmospheric conditions, with the result that the whole neighbourhood shakes at two o'clock in the afternoon, or 3:30 p.m., or whenever the blast goes off; there is usually a set time, and they have seismographs there recording the blast.

The other thing, of course, is the traffic generated by pits and quarries on highways, particularly at busy hours when the highway is fully taxed with vehicles coming or going from the residential community. You come into conflict with some very heavy trucks hauling aggregate and the automobiles coming to or from the residential community.

In those three areas, the municipalities, or at least the municipalities that I am familiar with, are most concerned. I do

not know what steps are being taken to solve them. I know that everyone has been looking at this question of blasting. I realize that the operators of the quarries are trying to act reasonably, but I wish they would at least check with the weather office and see what type of result is likely to flow from their blast.

Mr. Rotenberg: Mr. Chairman, if I may just interrupt for a moment. The present Pits and Quarries Control Act gives the government the power to regulate hours and the power to regulate noise levels. Once the provincial government has those powers--as in the court case I just indicated and generally--the municipality cannot get into hours or noise levels because the province is in it.

Mr. MacQuarrie: I realize that. But these are items of concern to the municipalities.

Mr. Rotenberg: They are of concern, but they would have to work them back through the provincial regulations and not through municipal regulations.

Mr. MacQuarrie: I did not raise them particularly as items that are not necessarily covered, but I am raising them as items that are not satisfactorily covered.

Mr. Rotenberg: I think the delegation is worried municipalities might get in and do some things to them that they will not like, and I am trying to indicate that municipalities could not get into those areas because the province is already into those areas.

Whether the province is doing it satisfactorily or not is something else again. But the municipalities cannot legislate in those areas. Just to clarify it, the municipalities possibly could require a municipal licence, but they could not have any regulations which would do you any harm.

Mr. MacQuarrie: That is not to say either that I do not appreciate the efforts that the operators of pits and quarries are making in this regard. I know they are trying, but there is still this quite serious concern.

Mr. Rotenberg: Just because it has been raised, I would just indicate, as I have, that we will be looking at how this legislation might affect pits and quarries and whether or not we feel there should be some change in the regulations to assist them.

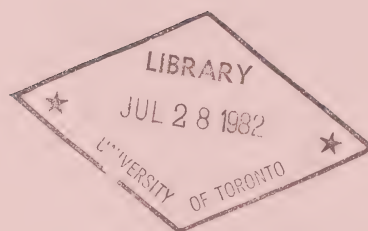
Mr. Chairman: Fine. Thank you. That being the question, I just hope that they do not extend the half-load limit for 10 or 11 months a year. Thank you for appearing before us.

Gentlemen, may I point out that the Metropolitan Amusement Association, exhibit 16, will be the first submission to us tomorrow morning at 10.

Interjection: Not 9:30?

Mr. Chairman: Not 9:30.

The committee adjourned at 4:49 p.m.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

MUNICIPAL LICENSING ACT

WEDNESDAY, JULY 21, 1982

Morning sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Brandt, A. S. (Sarnia PC)
Breaugh, M. J. (Oshawa NDP)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Epp, H. A. (Waterloo North L)
Eves, E. L. (Parry Sound PC)
McLean, A. K. (Simcoe East PC)
Mitchell, R. C. (Carleton PC)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Mitchell
MacDonald, D. C. (York South NDP) for Mr. Swart

Also taking part:

Rotenberg, D., Parliamentary Assistant to the Minister of
Municipal Affairs and Housing (Wilson Heights PC)

Clerk: Arnott, D.

Witnesses:

Cowan, R., President, Mississauga Taxi Drivers Association

From the Metropolitan Amusement Associations of Ontario:

Burgess, K., Member; President, Top Hat Amusements
Crane, J. D., Legal Counsel; Windsor Amusement Association
Leavey, V., President
Rosenfield, W., Past President

From the Metropolitan Toronto Taxi Drivers Association:

Gleitman, P., Past President
Rattle, R., President
Sapusak, N., Vice-President

From the Toronto Taxicab Brokerages Association:

Bell, B., Correspondence Secretary
Bresver, A., Financial Secretary
Conway, R., Legal Counsel
Hadbavny, J., President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, July 21, 1982

The committee met at 10:08 a.m. in room 151.

MUNICIPAL LICENSING ACT
(continued)

Resuming consideration of Bill 11, An Act to provide for the Licensing of Businesses by Municipalities.

Mr. Chairman: Gentlemen, a quorum being present, can we begin this morning's agenda? I might point out that we have two representatives of the city of Mississauga here, Messrs. Nisbet and Burch. I believe they are the clerk's employees of the municipality. They are here if the committee wishes to address any questions to them. That would be more in connection with our second and third witnesses, the taxi associations, I presume, because Mississauga's name came up yesterday in one of the previous presentations to do with taxi licences.

This morning may I refer you to exhibit 16, the light yellow cover, the submission from Mr. Crane from the Metropolitan Amusement Associations of Ontario. Mr. Crane is in front of us and has three other people with him. Mr. Crane, could you identify them and then carry on?

Mr. Crane: Mr. Chairman, as you have said, I appear on behalf of the Metropolitan Amusement Associations of Ontario. On my left is Mr. Leavey who is the president of the association. He is also associated with Western Automatic Amusements Ltd. in London.

On my immediate right is Mr. Bill Rosenfield who is a vice-president of Janda Products and a former president of the Metropolitan Amusement Associations of Ontario. On my far right is Mr. Ken Burgess from Midland. He is the president of two companies, one of which is Top Hat Amusements Ltd. in the Midland area.

I am not sure whether all of you have read our brief. I propose, subject to your approval since our time is limited, to capsule it for you and then call on our three witnesses in the order of Mr. Leavey, Mr. Burgess and Mr. Rosenfield. Hopefully, we will get that all done in our allotted hour. I note that we started late. Hopefully, we will not lose that 15 minutes.

Mr. Chairman: Mr. Crane, the average is three quarters of an hour. It probably is stretching it giving you the hour, so it would be best if you would try to end about 11.

Mr. Crane: Mr. Chairman and members of the committee, I am not sure how many of you had a chance to read our brief. If you have not, may I highlight it for you?

We have divided it into four parts. In the first part I merely recite the fact that we have in existence the Municipal Act which has been through a number of amendments over its history. It has stood the test of time and has been interpreted by the courts. Thus, there is a large measure of certainty as to what the Municipal Act means.

In paragraph 2 I merely recite my understanding of when this bill received first reading. After preparing the brief, I received a letter from the Honourable Claude Bennett advising me that the bill received second reading on July 5. I was not aware of this when I prepared the brief. When this brief was prepared, to my knowledge, looking at your agenda, Mr. Chairman, it appeared to me that most of the participants here were in opposition to the bill with the exceptions of the cities of Windsor, Kitchener and Cambridge. As you know, those cities also supported the private member's Bill Pr6.

Bear in mind this brief was prepared last week and we had to deal with the agenda, and perhaps your agenda has changed. The state of my knowledge then was that the only people apparently supporting this bill were the Association of Municipal Clerks and Treasurers. It would appear that there is not a ground swell of support from the citizens of Ontario for this bill except for those who hold positions in municipal government.

I will leave paragraph 3 because you are going to hear directly from these people. I am not sure if Mr. Gordon is here. If he does not arrive, then I will not be calling him.

I would like to turn to part II on page 6. I ask a question: Is there a special or unique mischief caused by pinball machines or video games that warrants the intervention of this honourable Legislature in the form of Bill 11, or are the Municipal Act and Planning Act sufficient to deal with the amusement industry?

Mr. Chairman: Excuse me, Mr. Crane. Do keep in mind that the same justice committee did hear your Bill Pr6, the Windsor bill, so we have the background on that.

Mr. Crane: Yes. I have got it right here, Mr. Chairman. I appreciate that.

Mr. Chairman: Right.

Mr. Crane: In the alternative is an omnibus bill, delegating all authority to the municipalities to deal with all forms of business, preferable to a provincial statute specifically designed to deal with a particular business, such as the amusement industry?

Part III is my argument. I can capsulize that for you under the heading on page 7, the need for uniformity of legislation and operational certainty. The advocates of change to the Municipal Act have brought before this honourable committee Bill 11 without establishing the factual basis for change. Thus, if Bill 11 is passed, Ontario will be entering a period of uncertainty for a number of years while the courts are asked to interpret what is

meant by the various words in this new bill and by any bylaws passed under the authority of Bill 11.

It is my respectful submission that the purpose of statutory law is to provide a guide to citizens in order that they can plan their life knowing they will not come into conflict with the existing law. This admirable purpose is frustrated by bringing in an entirely new law that will create uncertainty, if not total chaos, for years to come.

It is our respectful submission that there is no unique mischief or danger created by pinball machines or video games that warrants the intervention of the Legislature with such an extreme and discriminatory bill.

It is my respectful submission there has not been established any evidence of any increase in crime, truancy or any other problems to justify the extreme and confiscatory provisions in Bill 11, which are contrary to our democratic way of life.

It is our respectful submission that there are numerous pieces of legislation dealing with many of the problems the municipalities have with respect to the amusement industry. Such legislation is as follows: the Planning Act, the Municipal Act and the Education Act. Because of the existence of this legislation, coupled with the fact that no need or mischief has been established, it therefore follows that there is no reason for Bill 11.

It is our respectful submission that this uncertainty has the potential of being magnified 800 times, because that is my understanding of the number of municipalities in Ontario. It is possible that they could adopt different bylaws under the authority of Bill 11. Thus, this Legislature would have created a balkanized monster where no businessman would know where he stood with respect to business law in Ontario unless he hired 800 lawyers or one lawyer and 799 agents. So I guess the bill is not all bad.

Interjections.

Mr. Crane: It would appear from this analysis that the only possible beneficiaries to Bill 11 would be the municipal politicians supporting the bylaws and the army of lawyers being called upon to advise their clients what the law was in municipality A as opposed to the law in municipality B just across the river.

Turning to a new topic, it is our respectful submission that there is a need for an equitable and uniform licensing system. It is our respectful submission that the cost-recovery system of licensing proposed in Bill 11 could lead to abuse. A particular municipality could, under the guise of licensing, make the licensing fee so large and, coupling it with a plethora of inspection requirements, in essence, totally prohibit a particular business.

This honourable committee has already had the benefit of

obtaining the intent of three municipalities, namely, Windsor, Kitchener and Cambridge, which testified in support of Bill Pr6, the private member's bill proposed by the city of Windsor. It was obvious from a brief analysis of that bill that the city was seeking very extreme and confiscatory powers. For a critique of Windsor's bill, see the brief filed with this committee by counsel for the Windsor Amusement Association.

It is respectfully submitted that it is only logical to assume that the municipalities which were seeking such extreme and unjust legislation in the form of a private member's bill will not think twice before passing discriminatory and confiscatory bylaws, once Bill 11 is in place.

It is respectfully submitted that if there was a national emergency, such as existed in the Second World War, where extreme and unjust laws were accepted by the population as a whole, then perhaps there would be justification for Bill 11 and what will come after it. But in the absence of such an urgent need, this bill should be defeated.

Then I deal with the Charter of Rights and the due process argument. It is respectfully submitted that while Bill 11 itself may not on its face be discriminatory and confiscatory, it is quite clear that it gives very repugnant powers to the municipalities and there is no doubt that they will exercise those powers to their fullest by passing repugnant bylaws. Otherwise, why would they have appeared in front of this honourable committee in support of Bill 11 and, indeed, in support of Bill Pr6?

It is respectfully submitted that it is wrong, in accordance with general principles of fundamental justice, for this honourable Legislature to delegate all authority to municipal councils, without retaining any control over such councils to ensure that they will observe even the rudimentary principles of fair play and justice as outlined by the McRuer commission, which, among other things in its overhaul of the Ontario statutes, recommended that there be a basic standard of fair play and decency in dealing with the citizens of Ontario.

In contrast, Bill 11 creates a potential not only for abuse, but a direct conflict with the McRuer recommendations, all the principles of administrative law and, indeed, even our new Charter of Rights because there is no provision for notice, the right to be heard and represented and, finally, no appeal outside the municipality's control.

In conclusion, this committee should not be a party to creating what could turn out to be a Pandora's box of problems created by the passage of Bill 11 and the resultant enactment of numerous unfair municipal bylaws.

Mr. Chairman and members of the committee, we make a suggestion to you in a positive vein, so we cannot be accused of just being critical. The alternative to the Pandora's box is a business licence board. It is respectfully submitted that this board would create a province-wide standard applicable to all businesses, including the amusement industry.

It is respectfully submitted that if a province-wide tribunal were created it could operate similarly to the Liquor Licence Board of Ontario in that it could call in a licensee to show cause why his licence should not be revoked for some infraction of the provincial standard; or, in the alternative, this tribunal could warn, reprimand, suspend, fine and, after adequate notice and a fair hearing, revoke the licence, assuming the breach was sufficiently serious.

It is respectfully submitted that under such a system the licensee would complete a statutory declaration attesting to the true ownership of all of the property owned or leased and, in addition, the true ownership or identity of any mortgagees or any other investors in his or her business.

Stopping there for a moment, Mr. Chairman, you will recall the last day I was up here on the Windsor bill I mentioned to you that our organization would approve of a system, if they wanted to check out our people to see if they had any violations of the law and they could swear a statutory declaration. That could put to rest the fear that there were any undue elements involved with our industry.

That is done, as you members know, with the liquor licence board. You have to swear a statutory declaration as to whether you have or have not got a criminal record and who owns your tavern.

This is not a new idea. I have been making this submission to Metro. I made this submission a number of years ago of a liquor licence type of board. The response we got when we attempted to work with Windsor was we were rejected or jilted, and they came here with a private member's bill. Five years ago, in 1977, we tried to work with Hamilton and they tried to get a private member's bill.

10:20 a.m.

In 1966 we attempted to work with Metro and the city of Toronto and the Metropolitan Toronto Licensing Board. I remember telling Chairman Godfrey this many years ago. Every time, we attempt to make the suggestion to them that we would be prepared--I think his name is Mr. Neville, the director of the licensing board--to be regulated like the Liquor Licence Board of Ontario to be called in to file a statutory declaration and they would have very good control over us.

Returning to my brief, paragraph 21, it is respectfully submitted that the amusement licence board proposal, so far as it relates to the amusement industry, has the merit of licensing the operator and not the machines. Since the machines themselves do not cause trouble, this suggestion deals with the source of the problem by creating a legitimate and fair vehicle for weeding out bad operators.

It is respectfully submitted that such a tribunal would review all of the relevant facts of a particular applicant and decide, in the particular circumstances before it, whether such an applicant was entitled to a licence. It is respectfully submitted

that, when dealing with the amusement industry, at least one member of this tribunal be from the Metropolitan Amusement Associations of Ontario.

Part IV is our recommendation as to what your decision should be, that this justice committee recommend to the provincial Legislature that Bill 11 not be assented to but rather be sent back to the Legislature for the following amendment:

That a business licence board be created to set province-wide standards for businesses, including the amusement industry.

All of this is respectfully submitted.

With that outline, I would like to ask Mr. Leavey, who is the president of the Metropolitan Amusement Associations of Ontario, to tell you a little about himself so you will know something about the membership of our organization.

Mr. Leavey: Mr. Chairman, I am a partner in Western Automatic Amusements at 538 Dundas Street, London, Ontario. My partner is Larry Smith, RR 1, Strathroy. I am 44 years old and I have been operating for about 11 years in the vending and amusement industry; since 1976 in games.

A little bit about our company; we employ 10 people and we spend about \$700,000 a year in the communities in which we do business. We have a little typographical error there, the investment is a little higher than \$750,000; it should be probably \$1,750,000. I have been active in the community, in the church, with children, in the Boy Scouts, in promoting music, minor hockey, that type of thing.

The only thing I really would like to say to the committee today is that we do not mind being regulated, but what the cities always seem to try to do is make us responsible to get the kids to go to school. I said this in London many times when we were going through our litigations, if they would just apply the law to everyone, that anybody 16 years old and under had to be in school--in other words, I did not want to shoo them out of an arcade and they go across the street and sit in a doughnut shop or hang around the mall. I do not think that is getting to the problem.

In talking to educators, I could find no evidence where truancy really had increased after 1976, or drug use, or what have you. As a matter of fact, I had a young fellow from Strathroy who was in my office pleading with me to put machines in an establishment in Strathroy because he had six of his friends killed, who were young people, because of alcohol abuse, in car accidents, etc. It stunned me. I did not realize they really needed a place to go.

I have children of my own. If I had to let them hang around some place, I would prefer an arcade. At least it is supervised. There is a huge investment in arcades so usually the people who operate them are very careful as to how people act in them. With

the adverse publicity we get, probably they are more concerned with people or teenagers who would bring drugs into the place. We simply cannot afford that. We are probably more careful with that than any other business I can think of.

I cannot say anything else other than that if the law is to apply to us, I wish it would apply to everybody equally.

Mr. Burgess: Mr. Chairman, I operate amusement machines all over central Ontario, from Sault Ste. Marie to Timmins, Orillia, Ajax, Midland and Sudbury. We have large amusement centres in all these communities. We have never had any concern about our operation in any community where we operate these amusement centres, not one complaint from anywhere.

Mr. Crane: Incidentally, Mr. Burgess, I do not want to interrupt, but for the committee's benefit there are two appendices to our brief. If you would turn to those for a moment, you will see a letter from the mayor of Orillia dated December 1, 1981, about Mr. Burgess. That is appendix A.

Appendix B is a letter dated May 6, 1982, from the chief bylaw enforcement officer of the township of Tiny. In capsule form, they are a very praiseworthy endorsement of Mr. Burgess and his companies. You can read them for yourselves. In all modesty, he has not referred to them and I did not want you to miss it. Mr. Burgess, do you want to continue?

Mr. Burgess: Yes. I sat here last Thursday and listened to some of the concerns Kitchener and Windsor seemed to have about the amusement industry. I believe we can work together on some of the concerns they have but I do not think it can be done properly through Bill 11. It is giving some of the municipalities a little too much power that can be abused. However, I do feel some of their concerns have to be looked after. I would prefer to see something set up where we can work with these people in all the municipalities and get this problem straightened out.

We have the lowest-priced-playing video games and all types of amusement machines. It is probably the most inexpensive form of entertainment today. A family can enter an amusement centre and spend as little or as much as they feel they care to do. Going to a theatre with a family of four, you cannot get out of there without spending at least \$20, and that is if you do not buy any popcorn or pop or anything else. You do not have to do that in an amusement centre and they can have just as much fun. A lot of people enjoy playing these machines.

I firmly believe we can work with these municipalities as does the liquor licence board. I think that is the best way to look after this thing.

Mr. Crane: For members of the committee, Mr. Rosenfield's capsule summary is at page 4. Mr. Rosenfield is the vice-president of New Way Sales, a division of Janda Products Canada Ltd., the largest distributor of coin-operated machines in Canada.

Mr. Rosenfield: I am glad you did not publicly ask me my age as did some of the others, but I have been around for a long time. Among one or two other industries in which I have been active has been coin-operated amusement games.

I find that over the years we have been a very convenient whipping boy. We have been blamed for everything up to and perhaps in some instances including the original sin, to which I say in general, "hogwash."

Is there any merit at all to the many complaints we have been hearing about? Yes, I would say there is a small degree of validity to those complaints. There is unfortunately among us, as there is in any business, profession or calling, a bad apple here and there. But I say no business or profession is immune to that singular individual who turns out to be bad. I say specifically to you gentlemen that there have been bad politicians, some in prison. I would hate to think we were going to abolish all your jobs.

10:30 a.m.

Interjections.

Mr. Rosenfield: For fear of being antagonistic to some and of providing humour to others, I will refrain from mentioning names.

Mr. Hennessy: Thank you.

Mr. MacDonald: There are even bad lawyers.

Interjection: He was coming to that in the next part of his speech.

Mr. Rosenfield: I was coming to that, and that is why I looked upon you with such favourable humour, sir, when you brought up the point of conflict of interest. I would like to think that J. Douglas Crane is above such a thing. We do not say he is above it when it comes to turning on or off the meter when it comes to billing. We will discuss that in private, Mr. Crane.

Getting back to this, we do have the bad apple among the many very ethical and good business operators, whether they be street operators or arcade operators, who are the very large majority. What has always been very repugnant to me has been the advocacy of drastic surgery when it comes to our business--that is, the abolition of the entire industry in order to get rid of the one or two or three bad operators who practice. I have compared it to the bad surgeon who advocates chopping off an arm to cure a bad finger. I say that is morally corrupt. It may give him a better fee, but there is certainly no call for that type of drastic surgery.

It applies to our industry as well. Over a number of years, we have suggested to many municipalities very viable and very equitable means of dealing with the bad operator. One way, as Mr. Crane has suggested, is to have a governing or reviewing board

very similar to the Liquor Licence Board of Ontario, which could look into every individual complaint and judge it on its own individual merits, and suspend or totally revoke licences on the basis of individual merit or individual abuse, but not to subject an entire industry to the penalty of the very minute fraction who might abuse.

We have heard great clamour from the educators also. They have blamed our industry for everything under the sun, particularly truancy. Again, I say this is hogwash. We get down to the point where those people who are most directly responsible for a condition point the finger in all directions, saying, "He or that or this is responsible for the conditions we ourselves have created." The boards of education are following that path of confusion, rather than sitting down and recognizing the fact that there is indeed a problem, and dealing with it at its source, that is, within the school system itself.

Truancy has existed for years and years, long before the invention of coin-operated amusement games or any other games. People who read have only to go to the public library and get a book written by a chap by the name of Dickens relating to truancy and child welfare conditions long before anybody ever heard of the words "electronics" or "video" or "pinballs" or anything else. This is not a new situation.

We have provided a new place at which to point the finger of responsibility, rather than toward oneself. The responsibility for truancy lies in the fact that the school system itself has not made the schools interesting enough places for kids to be. The curriculum in practically every school system I have ever checked is about the level of a five-year-old child.

Our kids today are bright. They want challenge. They want to be able to think and they want to have their minds challenged. Our school system, unfortunately, is not presenting that challenge to them today. Therefore, they go elsewhere. In addition, there is no code of behaviour in our schools. There is no dress code. There is no standard by which we try to train these kids for anything at all.

Mr. MacQuarrie: No discipline.

Mr. Rosenfield: None whatsoever. If there is any discipline at all, it comes from the students trying to discipline the teachers. They will tell the teachers what they may do and what they may not do. They will belly up to a teacher and say, "You may not tell me I have to stay after school." I think all the boards of education would be much more to the point and to the greater advantage to the students and to society if they were to pay more attention to what is happening in their schools and were to try to clean up the causes of delinquency and the causes of the students coming out of grade 13 not knowing how to read and write.

Mr. Rotenberg: They can push buttons.

Mr. Rosenfield: They can push buttons. Why do they condemn electronics when they are now bringing the electronic

computer into schools to tell them two times three is this button times that button, and then they read the answer? Thank God, they yell in some cases.

Interjections.

Mr. Rosenfield: If we continue along the lines on which we are going, believe me, ladies and gentlemen, there will come a time when they won't even know which button to push, because they won't know what symbol represents two or three. The only way they are going to get that is by going down to the arcades and playing computer games, which will teach them what two represents and what three represents, and, believe me, the kids playing computer games today do learn how to read and multiply and add.

Mr. Epp: You can probably get provincial grants now for your arcades.

Mr. Rosenfield: May I quote you on that, sir?

Mr. Epp: No. I am--

Mr. Brandt: I would further suggest you are probably going to get them to mark their attendance when they go into your amusement arcades.

Mr. Rosenfield: That is not too far-fetched. If I were in the school system, I would want the arcades right next door to the schools. Do you know why? Because then I would know where they are and, when the school bell rang, I would have somebody there saying, "Come on, back to school," and you could get them.

Mr. MacDonald: You are stealing Breaugh's line. He is a former principal. He wants an arcade so he will know where to find the truants.

Mr. Rosenfield: I love that man.

Mr. Breaugh: I'll pass.

Mr. Rotenberg: He is going to want to nationalize your industry. He is with the NDP.

Interjection.

Mr. Rosenfield: This is my telling you in the nicest way, sir.

10:40 a.m.

If we want to be realistic, and I think this committee does want to attack this from a very realistic point of view, we must recognize the fact that most of these complaints are coming from people who are simply trying to divert attention away from the real causes, such as the school system, and point the finger in some other direction: "I am good; everything else is bad. Our school system is great; the kids are bad."

I go back to parents who are stating that the kids have stolen money to play games. Nonsense. How do they know whether kids are stealing money to play games? Kids are stealing more money to buy cigarettes and booze and drugs. They steal to buy records and record players and all sorts of things like cassettes. They are stealing more to meet with their friends, their peers at the local fast-food place than they are any other place. Are we going to abandon, restrict, and destroy or eliminate all the fast-food outlets? Nonsense.

Kids steal because parents permit them to steal, because there is no parental guidance. There is no parental discipline. There are no parents saying, "This is what you will be allowed to do and this is what you will not be allowed to do." Thank God in an arcade we have discipline. Kids are taught how to behave or out--something they are not getting at home.

Do not blame the kid. I blame the parent. The parent permits the kid to steal so the kid steals. The parent does all sorts of things which do not set a proper example for the kid. Then they turn around and say to government, "It is your job to take care of my child." Nonsense. It is not the duty nor the responsibility of government to take over the responsibility of parents, to become surrogate parents to these kids.

That is not the reason for government, it is not the duty, it is not the responsibility of government, nor is it the responsibility of government to be forced into baby-sitting services either. I think it is the duty of government to provide rules and regulations whereby society can live equitably, where businesses can be run equitably with the same laws applying to everyone to see that there is no abuse.

When we come to abuse, I would like to bring up to you the question of whether the industry is to be judged by the game or by the fact that it is a coin-operated arcade. Is it the game which inherently is bad--video game, pinball machine or any other game--or is it only because it is activated by the insertion of a coin which makes it objectionable? If the game itself is inherently bad, then I think it is the responsibility of government--you people--to say that we must provide a law which is going to be equitably, indiscriminately applied to all games.

Now we have a problem. What do we do with the large department of games which we run into at Eaton's and Sears and the Bay and Simpsons and all these other places where kids go every day, whether they are supposed to be in school or not? They play these games. I have seen these stores run contests where hundreds of kids are there playing these games.

The difference is they are not coin operated. I am talking about the non-coin-operated games in the department stores and other places. If the game is bad it is bad. If it is not bad then it is not bad. It is not a matter of whether it is an arcade or in a department store. If, however, by the simple reason of inserting a coin it suddenly takes on an aspect of badness, then that insertion of a coin should apply to all things which are activated by a coin. Are any of us going to tell Ma Bell that they are going

to have to take out all their telephones because they are bad because they are activated by the insertion of a coin?

There is a direct parallel there, gentlemen and ladies. If one thing is bad because, and only because, it is activated by the insertion of a coin then we must, in all fairness, apply that same standard to all things which are activated by a coin. Are you going to tell all the cities to get their parking meters off the streets? Are you going to tell the telephone company to get its telephones off the streets? Are you going to tell all the vendors to get their vending machines thrown in the lake because they are activated by insertion of a coin and therefore inherently bad?

I think you see what I am driving at. There cannot be two sets of standards. If we are going to be just, we must have laws which apply equally to every case. To do anything but that is unjust.

We have a lot of people we personally hire between the two companies. We have the operating company and the sales company. We employ probably close to 150 people across the country. We return to the various municipalities in which we operate perhaps \$12 million or \$15 million in salaries and in other things. We pay approximately \$8 million a year in import duties, federal sales tax, excise tax and things of that nature. A lot of that would simply be down the drain and cut off.

In addition to that there are very many--it would run into thousands actually, across the province--of small mom-and-pop-type stores, variety stores and grocery stores which depend upon the income generated by the one or two games they have to pay for their operational expenses, their overheads. Without that income they would be unable to stay in business. What little they make from sales in variety stores or grocery stores, that is what they have to live on. Cut off the other income and they would be taken from being taxpaying producers and contributors to the income and the economic welfare of the province, to people who are suddenly thrown on to the relief rolls and become takers from the provincial and municipal funds.

Are we prepared to do that simply to satisfy the egos of some small portion of political people who really do not know what they propose in this bill but listen to a very vocal but tiny fraction of our population who say: "Get rid of the games because they cause my kid to go to hell. He is totally corrupt now because the games exist"?

We know that has no merit. We know that the people who are screaming about this are very vocal but very small in percentage. They have not thought through the result of what the passage of this bill would create. I ask you--and I have great faith in the judgement of this committee, of our members of parliament, and the parliamentary assistant--if you realize the passage of this bill will create such chaos, such inequities and such destruction that our economy cannot afford it? We cannot afford the court fights and the total destruction of what I feel is a just system of law.

Mr. Epp: Are you opposed to the bill, based on the fact

that it is transferring certain responsibilities to municipalities, or are you opposed to it principally because you seem to see a great increase in the amount of power that government will have in order to control and regulate the industry that you are in?

10:50 a.m.

Mr. Rosenfield: I am not concerned with control and regulation, I am concerned with abolishment. We have on many occasions stated to these various municipalities our willingness to co-operate with them in every possible way to arrive at just solutions to what they feel are problems.

In many cases you will find that we are opposed to some of the things they say they are opposed to. We are opposed to the bad operator because they put our business in jeopardy. They put the millions of dollars which we have invested in our business in jeopardy, so we are as anxious to get rid of those objectionable aspects of our industry as these people say they are. Yet they reject every single attempt by our industry to sit down with them and arrive at just and equitable solutions which we have proposed.

In no case has any municipality ever indicated its willingness to sit down and discuss this with us. We have been totally ignored. The only actions that have taken place were the introduction of private members' bills or government bills such as that being proposed now.

Mr. Epp: Pardon me. Private bills rather.

Mr. Rosenfield: Private bills, I am sorry.

As a matter of fact at one time, in 1977, the municipality of Metropolitan Toronto wanted the same type of extraordinary powers that are being requested here. We spoke to Attorney General McMurtry and he turned them down. He told them that there are already enough rules and regulations, there are enough laws on the books and they simply have not taken advantage of the laws already on the books to regulate.

I would like to bring to your attention a Supreme Court of Ontario ruling which stated in a London case that to regulate envisions the continued operation of that which is to be regulated. We are not concerned too much with regulation. We can live with that. We can sit down and work out regulations. In fact we ourselves were the first ones to advocate standards to be set by government which would govern the operation of our industry.

Mr. Epp: What is it in the municipal system that you take exception to? Is it the fact that they are not sitting down with you? Is it the fact that there are 800 of them, or is it some other reason?

The reason I ask that is because in view of the fact that you have this tremendous faith in the province of Ontario, that things are run well and everything else and things are just, to use that slang term, hunky-dory, they are just great--

Mr. Rosenfield: I would not say that, sir.

Interjection: I'll say it, Herb.

Mr. Epp: --with respect to this particular issue, and yet in passing some of that responsibility down to the municipalities, there is an absence of this tremendous faith in the municipalities.

Mr. Rosenfield: Absolutely.

Mr. Crane: Mr. Epp, perhaps I can answer that. Our concern has been demonstrated because I tried to say in the brief, we tried to work with Toronto and they rejected us. In the Windsor brief you will have seen, if you saw it, letters to Windsor by Mr. Paroian, the previous lawyer, saying: "We want to sit down and work with you. We want to put a policeman, a clergyman and a politician on a board and we will work out." The knee-jerk reaction was, "We want a private member's bill." We tried the same thing in--

Mr. Epp: A private bill.

Mr. Crane: A private bill. Mr. MacDonald might remember that Mr. Ian Deans brought in a private member's bill in 1977 for Hamilton. In our brief there, we gave you a copy of a letter I wrote to the city solicitor that was not even acknowledged.

In a nutshell, our concern is that if you give it to the municipalities, it is great in theory if we live in a Utopia, but they are subjected to a lot of local pressure and we are afraid that some of them are going to run off and pass some extreme laws. The track record is not good.

We feel that at least there is a little more control with the province because it is province-wide and they are subject to less pressure. Why not set the standards so it is uniform?

A businessman like Mr. Leavey, who has a machine in London, might want to move up to Mr. Hennessy's riding in Thunder Bay or Mr. Bernier's riding in Sioux Lookout and put in some machines. What if the town of Sioux Lookout has a different law from the city of Thunder Bay? You will never know where you are going. It is going to become a jungle.

Our main bottom line to you is why are you doing this? Why do you want to create a jungle? What is wrong with the Municipal Act? Is there something wrong with the Liquor Licence Board of Ontario that has not worked well? I think it works reasonably well. It seemed to control it. I do not know why you want this fractured, unless you want to abdicate your responsibility. I do not see the ground swell--

Mr. Epp: My particular concern, and this is where I am having difficulty, is that when you look at the group here and you are asking us to make a decision and we are all members of the Legislature--

Mr. Crane: A fine group indeed.

Mr. Epp: Thank you very much.

When you look at this group, most of us have had municipal experience. Where do we get the God-given wisdom all of a sudden that when we come to Queen's Park we have a hell of a lot more wisdom when we pass that line and get elected than we did when we were municipal councillors? This is where I am having difficulty with the problem that not only you are raising but that is being raised by other groups.

All of a sudden you are saying: "You fellows are really wise. You know how to make the laws. You know how to do this and you know how to do that. But when you are municipal councillors, you are down there and you just do not know how to make those wise decisions."

Mr. Crane: The answer to it is the Municipal Act has been in existence for 50 years or more and it has stood the test of time.

You are surrounded by a number of your colleagues and you do not need me to tell you this, but quite often municipal politicians have a particular hobby-horse. It might be aluminum wire. It might be something else. There is a lot of pressure on getting re-elected.

You are a little more insulated here. You can always get off the tack, so to speak, by saying it is province-wide. If your individual riding people give you a lot of heat and you are an alderman you have to do what they want pretty well or you will not get re-elected.

Mr. Epp: But do you not think those people should be sensitive to what the people want?

Mr. Crane: I think the municipal politicians are more part-time than you gentlemen. You gain experience. You have people here like Mr. MacDonald, who has been here 27 years.

Mr. Epp: He has been asked to leave.

Mr. Crane: He is still here and he is passing on his wisdom. He came in as a rebel, but now he has--

Interjection: He has mellowed.

Mr. Crane: --mellowed.

Mr. Rosenfield: May I respond to that, Mr. Epp? I am not going to try to butter up any of you gentlemen. I will try to state what I feel is fact.

On the municipal level you will find a lot of young bucks who are going to do their damndest to rise, to become stars.

Mr. Epp: Well, Mr. Brandt rose to become mayor and now he is here.

Mr. Rosenfield: They will be very responsive to very small vocal groups without going into the centre of this thing and finding out where the real problems are and how they deal with them, not from a standpoint of passion but from a standpoint of equity.

I say to you gentlemen--without trying to butter you up, I repeat--by the time you get here you have gone through that stage and you are able to look at things on a much broader base than they can look at at the local, municipal level. As Doug said, you are not subject to the same vocal pressures from this ward or that little group.

With experience comes wisdom and you have accumulated varying degrees of wisdom, depending on how long you have been at this. So you can look at things from a more objective viewpoint and say: "What is this all about? What is the meaning and what is the merit?" You can throw out the extraneous matter and get right down to the meat and say: "This is what it is all about. I do not care how loud the shrieking is from this little group, we cannot allow it."

Mr. Chairman: Mr. Rosenfield, we have six more members who wish to ask questions.

11 a.m.

Mr. Epp: Just one observation, Mr. Chairman.

Mr. Chairman: A very short one.

Mr. Epp: I was on a municipal council for 10 years and have been here over five. You talked about exceptions earlier, and how we should not gear our legislation to the odd exception and so forth, and I agree with you on that.

The other thing is that, during my 10 years in municipal office, I did not experience these young bucks with these little hobby-horses always coming in and trying to ride those kinds of things. There may be some exceptions to that, but I think there are more exceptions than the rule. So I will leave it at that. I know you have other questions.

Mr. Chairman: In view of the time, and with the taxi associations coming after and since we have six people who wish to ask questions, may we have no supplementaries and limit you to five minutes each, including questions and answers. This is going to shove us well past 11:30 a.m., and then we are going to be in trouble with the taxi associations. So five minutes, please, gentlemen, question and answer inclusive. Mr. Rotenberg, five minutes.

Mr. Rotenberg: Mr. Chairman, to Mr. Crane: I must say that I do not even understand the whole thrust of your brief, because you seem to be saying, first, that Bill 11 is singling out

video games, which it is not, and second, that Bill 11 is giving municipalities more power over places of amusement, which it does not.

I do not know if you have read section 232 of the Municipal Act, which now gives municipalities not only the power to license places of amusement, including video games, but in my reading of the present Municipal Act, which you seem to be in love with, the municipality has more power over your industry under the present act than it would have if we passed Bill 11.

So, Mr. Crane, I would ask you what powers are we giving the municipalities under Bill 11 which they do not now have under the present Municipal Act, which in any way can do your clients damage?

Mr. Crane: I guess that what I am saying, Mr. Rotenberg, is--I am sorry you did not understand my brief--

Mr. Rotenberg: No, I understood it, but I think it just is not correct.

Mr. Crane: I am hopeful that the minister, to whom I also sent a copy, understands it. In any event, my concern, as I understand Bill 11, unless I completely misconstrued it, is that you are giving--not you personally, but the proposal is to give, to delegate this power to municipalities. I believe there are 800 municipalities in Ontario. The thrust of it is to sort of give it a local flavour. Our concern is that it could be abused and there could be a proliferation of rules and regulations.

The Municipal Act has been in place for a number of years and it has been interpreted in the courts. As I understand it, what is going to happen to Bill 11 is that we will enter a new era, and we are not quite sure what these municipalities are going to do. We will then have a series of challenges for 10 years in the courts against each individual bylaw and each municipality until we know what it means; and that is--

Mr. Rotenberg: I am sorry, I just do not understand that you are saying because, under the present Municipal Act, each of the 850 municipalities now can regulate places of amusement. Each of the 850 municipalities now can set--you were complaining they might set fees which may be a little high; there is no control over fees at the present time, which we are adding in the bill, which is a plus for you. The municipalities now can ban places of amusement from any plant abutting any highway, and we are taking that power away from them. The 850 municipalities can now pass 850 different rules and regulations, and the power which is in the new Bill 11 is somewhat more restrictive.

So I really do not understand the thrust of your brief in saying we are giving the municipalities more power.

Mr. Crane: If you will permit me: Why I am saying that is that you have said, not once but twice, that they can do these things. The courts have said that you cannot prohibit under the guise of licensing.

Mr. Rotenberg: You cannot under the new act either.

Mr. Crane: With respect, unless you are also a judge, we do not know how that is going to be interpreted.

Mr. Rotenberg: With respect, we write laws all the time. For you to throw up these bogymen that some judge is not going to interpret the law the way it is written, I think is just incorrect, because it is the same basic wording as in the present Municipal Act.

Mr. Crane: I do not want to debate with you. I am trying to answer your questions.

Mr. Rotenberg: Please.

Mr. Crane: The proof of the pudding in the past--the Municipal Act is in place and the various municipalities have passed bylaws, but you use the Municipal Act as a ruler, and it has worked reasonably well. All we are suggesting is that the province remain in the picture and have a province-wide amusement board or business board to set standards, and if the municipalities can work within that, rather than having a proliferation of possible different laws, that is our position. You may not agree with it.

Mr. Rotenberg: With respect, the province is not in the picture now.

Mr. Crane: Well--

Mr. Rotenberg: The province has no control now. The province has delegated to the municipalities the right to license places of amusement.

Mr. Crane: I know, but under the Municipal Act, there is no point--

Mr. Rotenberg: What is the difference, a municipal act or a licensing act?

Mr. Chairman: Mr. Rotenberg, will you let him finish the question? Then we have to move on.

Mr. Crane: I was interrupted and I do not know where we left off. I think I will leave it.

Mr. Rotenberg: Just a plain question, Mr. Crane. What powers will the municipalities have under Bill 11 that they do not have under section 232 of the present Municipal Act?

Mr. Crane: If you read the brief, one of the things is that the provisions for appeal and notice and such things, as I understand it, are not out of the control of the municipality, whereas under the Municipal Act now, if you do not like a bylaw--if, for example, a licensing bylaw cannot discriminate, and the last time I was down here you pointed out quite properly a

case I lost, zoning bylaws can discriminate, licensing bylaws cannot. I do not know what is going to happen in the new law.

I do not understand the need for it. I have not heard a ground swell that the Municipal Act is not working. The proof of the pudding is in the eating. We heard Windsor needed this, yet when one of our witnesses was here between the first and second day, on an open-line radio show, no complaints came in. All we hear is these old wives' tales that they are doing a lot of bad things. If that is so, then you need new legislation, but I do not understand that as being the fact.

Mr. Rotenberg: With respect, Mr. Crane, what Windsor and Kitchener are asking for is not Bill 11. They are asking for powers over and above Bill 11.

Mr. Crane: But that shows you what those municipalities may do if they pass a bylaw--

Mr. Rotenberg: They cannot do it under Bill 11.

Mr. Crane: That is where you and I part company.

Mr. Chairman: Mr. Leavey, did you wish to add to that?

Mr. Leavey: Perhaps just to give you an example, in London they passed a bylaw which we lived under for about seven months regarding age limits. My understanding of Bill 11 is that I would have to appeal that to a tribunal set up by council which already disagrees with me.

Mr. Rotenberg: That is not correct because under Bill 11, unless we make some exemption to it, the municipal council cannot put in a bylaw with age limits. If they try to put one in, your lawyer can tell you you can go to court and have that bylaw thrown out immediately. It is the same as under the present regulations. The municipality does not have the power to put age limits under Bill 11. The power is no different from under the present Municipal Act.

Mr. Leavey: Age limits was one thing we had to live under. What if some other thing comes in that I disagree with? Where do I go? Can I go back to the provincial courts or do I have to go through the cities?

Mr. Rotenberg: There are two things. If they pass a bylaw which is in accordance with Bill 11, and it is my contention any bylaw they pass in accordance with Bill 11 would be in conformity with the present Municipal Act because they have no more powers, under the new legislation you can appeal it to a municipal council committee; under the old legislation, you cannot appeal it. If they pass a bylaw which is ultra vires beyond their powers, then you can go to court the same as you can now. None of your rights has been taken away from you under this bill.

Mr. Leavey: That is kind of muddy.

Mr. Brandt: As I view this issue, I think it is one of the uniqueness of your industry, gentlemen, and whether or not special or unusual controls are justified. I believe it was Mr. Rosenfield who raised the question about whether or not the machines are inherently bad or whether it is the act of putting a coin into the machines.

I would suggest one of the things that is happening in your industry, and I think you recognize this, is that there is almost a sociological phenomenon that surrounds your industry, and that the arcades particularly have become meeting places for young people and this on occasion causes problems. You have pointed out that that is in a minority of cases.

I want to read into the record a letter with which Mr. Leavey might be familiar. It is from the office of the chief of police in London, signed by Mr. MacIntosh, who is the acting superintendent. He says: "While police officers feel that amusement arcades are a breeding ground for the commission of criminal acts, the arcades have nevertheless been permitted to flourish."

I would suggest that is a pretty stark and harsh statement and one that I doubt very much the officer in question would have put into a letter to the board of control of the city of London if he did not feel that way.

11:20 a.m.

Mr. Rosenfield, you have indicated there is a minority of operators who are "bad apples," and you want to get rid of them as badly as we do. Do you have any suggestions, or does anyone else here, as to how you might get rid of those bad apples by way of control, while not cutting off the entire arm, which you used as an analogy earlier in your comments?

I am quite prepared to accept the fact that you have responsible, legitimate operators, and I would hope the gentlemen who are here today represent that group. I also know that in your type of business, if you go back many years ago into the pinball business, the same thing occurred. There were some very, very questionable operators many years ago in that particular industry--you know it and I know it--questionable in the sense of perhaps even having organized criminal connections. That was a reality and it was very well publicized in the media.

The fact of the matter is that if you are trying to have an industry operate in a proper fashion, as I think this industry can if it is properly regulated, what would you suggest that we, as legislators, do in order to give either municipalities or the province the kinds of powers that should be undertaken in order to bring about some necessary controls? What controls would you suggest?

Mr. Rosenfield: I think we discussed that earlier when we suggested the creation of a licensing board which would set the standards, which would hear complaints and which would take proper disciplinary action where indicated. We have made this

recommendation to municipalities for the past six or seven years without being responded to in any manner whatsoever. We have been ignored.

I hope this will not be the case here because I feel that the creation of such a board will tend to eliminate whatever problems exist now. It will be able to act upon any complaints which are received, to investigate to determine the validity of the complaints and to take the proper disciplinary action immediately. This would tend to eliminate the vast majority of those bad apples. It would not prevent new bad apples from coming in but it would permit us to deal with whatever undesirable elements come into the industry as the occasion arises.

Without such a board, without such an overseeing group, I do not think you can have any more success than the liquor industry could have in trying to supervise liquor-licensed spots without a group such as the Liquor Control Board of Ontario. I think it is absolutely required, it is necessary and it will serve to eliminate all the problems of which the municipalities complain today.

I know that Windsor and London have stated that they have made genuine attempts as municipalities to use the existing legislation, but to no avail. This is to quote the words of Mr. James Wallace. They have not made any genuine attempt. What they have tried to do was to pass legislation which is far beyond what the existing legislation would permit. The courts simply told them that law applies to governments as well as to individuals and what they propose to do is unconstitutional and, therefore, they knocked it down. It was struck down. It was ruled illegal.

I feel that what is being attempted here by these two or three municipalities which support this Bill 11 is to get you to do what the courts refuse to allow them to do on their own, namely, to pass a bill which would make legal what the courts have deemed to be illegal, that is, to contravene and subvert the constitution and the laws of our land.

Mr. Chairman: That is it, Mr. Brandt?

Mr. Brandt: I had a series of questions, but I will defer to some of my colleagues.

Mr. MacQuarrie: Mr. Crane, perhaps I could follow up briefly on the rather interesting proposal you have put forward for the creation of a business licence board to set standards on a province-wide basis for business. As you know, at the present time municipal councils and boards of commissioners of police have fairly broad licensing powers. They are able to license everything from taxicabs to sign painters, bowling alleys and the rest of it.

For what sorts of business do you envisage provincial licensing boards establishing standards, and would you leave certain businesses which have direct effects locally to the individual municipalities in the terms of their licensing capacity?

Mr. Crane: To answer your question, Mr. MacQuarrie, I

would suggest that the businesses which just have a local operation be left there, but businesses, such as the amusement industry, that are province-wide come under the jurisdiction of this new business tribunal or whatever you want to call it.

Speaking personally, our organization is prepared to be bound by it, even if no other business is, because in that way we would know where we stood. If we had a business in Toronto and we wanted to operate in London, Kitchener, Thunder Bay, Kenora or Sarnia, we would know what the ground rules were without checking into each one of those municipalities.

We would be content if the suggestion was amended just to apply to an amusement board. Mr. Brandt raised the issue of bad apples and organized crime in the past. The Liquor Licensing Board of Ontario checks into whether or not you have a criminal record. Those bad apples, if they exist, which Mr. Brandt quite properly brought out about in connection with what happened years ago, would not get a licence or their licence would be revoked.

I do not know whether any of you have ever attempted to get a liquor licence, but when Judge Robb was there I had clients who were caught stealing hay in 1928 and they could not get a licence. I had clients who did not have a radio licence and they had paid a \$5 fine and they could not get a liquor licence. All I am saying is with that type of apparatus already in place, with our economy the way it is, there are not that many people getting new liquor licences.

There is already an army of inspectors checking liquor licences and checking hotels for hotel fire and safety. Why could they not also be given the power to inspect pinball arcades? If we do not muster up, then revoke our licence, call us in.

Mr. MacQuarrie: How do you define an arcade? We had Mr. Rosenfield speaking of single machines in corner shops. Then there are the full-blown arcades where there might be dozens of machines. There is a variance of the same sort of thing, ranging from an individual machine to the whole thing. Surely some of those would have a local impact.

Mr. Crane: Yes. Over the history that I have lived with in this industry, I think Hamilton says three or more and Toronto says three or more.

Mr. Burgess: Two or more.

Mr. Crane: Two or more, excuse me. If you have two in a ma and pa Becker's store, that is not an arcade and presumably you would be exempt from the provincial tribunal. You would be regulated by the municipality and hopefully they would not put you out of business.

Mr. MacQuarrie: It would just be the arcades or larger installations that you would suggest should be subject to provincial regulation.

Mr. Crane: Yes. I think that would have the merit of

dealing with the existing arcades on Yonge Street and elsewhere because presently they are nonconforming uses. If you passed a law that there was a tribunal, they would have to submit the names of those who own their arcades and who have the mortgage on them. You would know if anyone has a criminal record. You would then have some control over existing ones.

I do not know how often the Liquor Licence Board of Ontario licenses people. I guess your licence lasts a year or two years and would come up for renewal. Those that are in place, although they are nonconforming, would have to fill out a form: "Do you have a criminal record?" "Who owns your mortgage?" "Who are the people?" It would be province-wide. I do not think the municipalities have the wherewithal, the experience and the inspectors to do that.

11:20 a.m.

Mr. MacQuarrie: The major ones have pretty experienced police departments that they can get most of this information from.

Mr. Crane: But I do not think the policemen want to go in and do the inspections, whereas the liquor inspectors could.

Mr. Leavey: I might interject that London does that now. We have to provide who owns our--

Mr. MacQuarrie: Most of them have the Canadian Police Information Centre and all the rest of it tied in. Thank you.

Mr. Chairman: Just one second. We have additional people wishing to appear before us and we are back in this conundrum. I am in the process of trying to do it tomorrow morning at nine o'clock to work them in. Does this meet with your approval? Thank you.

Mr. Breagh: Two quick questions. One is, Mr. Brandt has read into the record what is becoming fairly common in Ontario now and that is somebody in someone's police department says that video games are kind of a breeding ground for criminal activity among young people.

It is a remark which I see from time to time about almost any place where young people gather, including high schools, shopping centres, video game arcades and whatever. It has been my experience that every time I try to track that down, there seems to be an absence of any kind of study. It has become my opinion that just because the cop says it is so does not necessarily mean it is true.

Are you gentlemen aware of any municipality or any police force in Ontario which has done a study of that kind, attempted to identify sources of criminal activity and to provide more than just a personal opinion that these video game places are bad places for kids to be, and gone a little further than that and attempted to prove what they said was true?

Mr. Rosenfield: To date, there is no record of a study

ever having been made by anybody, any municipality or by any group. To this point, it is simply been accepted that officer so-and-so says that and it is generally couched in these words, "It may be a breeding ground." Any place where people congregate may be something or other, may be a breeding ground.

We have experienced exactly the same response that you have. There has been no satisfactory explanation of how these opinions were arrived at, no studies have been made, there has been no corroborative evidence given to their statements. It is simply to this point, we feel, personal opinion being accepted as fact only because these people want to accept it as fact.

Mr. Crane: Mr. Breagh, if I could just say one thing; when we were here in 1977, we had a letter from the morality squad in Toronto attached to a report from Mr. Neville, who, I believe, is at the licensing commission in Metro Toronto. It would be on your files here. But the gist of it was that morality officer had no evidence of any crimes, or breeding, or anything like that coming out of arcades, which was in conflict with what Mr. Brandt has said from the London police department.

The only other thing I would invite you to look at is, in the brief we filed with the Windsor bill, there was an article in Time magazine on January 18, and I quote just one sentence, "The fears that occasionally are voiced of drug-buzzed, beery teenagers hanging around video parlours in menacing packs seem absurdly exaggerated." I do not know what else to say.

One of our clients has retained a sociologist--if that is the right word--from York University to do a study, I believe, in connection with an application for a business in Oshawa. Hopefully that sociologist will bring together some sort of evidence that will put those statements to rest. They are hard to answer really.

Mr. Breagh: The last time I saw it was when somebody was trying to tell me that high schools were breeding grounds for criminal activities among young people and I did not hear a request to shut down all high schools.

Mr. Rosenfield: May I say, sir, that a study has been made, reportedly by the newspapers, and it has been stated that the easiest place in the world to get drugs is in the high school classrooms. Are we going to abolish schools? I think that we should do something to eliminating the source of drugs if that is so.

That is the only study that I think has ever been made and that is highly suspect because that was made by the newspapers.

Mr. Breagh: As a matter of fact, the only one I am aware of that had any kind of legitimacy to it was done by the Addiction Research Foundation about two years ago, which included a major study of high schools in the Oshawa area. One of the things which bothered me somewhat is that the basis of the study was they went around and asked kids, "How many of you have tried drugs?" I dare say if you asked any normal teenager, "Have you

tried what the majority of your peer group has tried?" whether he or she has or has not, the answer would be, "Yes, I have."

Let me conclude with one other question. I am a little attracted to your notion that some kind of a regulatory board be set up.

In talking to people to operate taverns, they are not quite as ecstatic about the Liquor Licence Board of Ontario and its procedures as you appear to be. What makes you think, for example, that a municipal council could not sort out the bad operators from the good operators just about as well as any other board that anybody could set up?

We are in agreement that the purpose of the exercise is not to put everybody out of business, but to identify those people who do not operate their business properly and to withdraw their licence. Why could that not be done, as Bill 11 proposes, by a committee of a council?

Mr. Rosenfield: I do not think it can be done for the simple reason that over the past number of years they have refused to even sit down to discuss it with us. They simply do not want to, but I will defer that to Mr. Crane.

Mr. Crane: Mr. Breaugh, our concern is it might not be standardized. I think there might be some municipalities which could indeed do that. Our concern is that we might have a client who is operating in another municipality across the river who cannot do it properly. It may be election time and maybe there is a lot of pressure and maybe they cannot do it because some of them want to stamp them out. Let us be candid with each other.

Mr. Breaugh: My concern would be simply that it is a bit of a kangaroo court to say to the group that originally decided "We do not like video parlours in our community," "We will take three of those 16 and give them a committee to hear the trials." That does not seem to be quite kosher to me.

Mr. Rosenfield: Sir, my concern is the fact that this opens the door to abuse and the application of Murphy's law which, we know, is tried and true, that if something can happen, it will happen. If we open the door so wide for abuse we know that abuses will occur.

Mr. Breithaupt: Just one brief, three-part question, Mr. Chairman.

Mr. Chairman: Each in 45 seconds.

Mr. Breithaupt: I was interested in Mr. Rosenfield's comments, particularly on page 5, setting out the view that in many of the mom and pop stores, as he called them, the convenience stores, one or two machines bring in a revenue which is of quite some help to the operators of those stores.

I am wondering, and this is the three-part question, could Mr. Rosenfield tell me, in a situation where there is a machine,

what is the value of that machine, what sort of revenue would that bring in in a month and, ordinarily, what share of that revenue goes to the owner or operator of the store?

Mr. Rosenfield: The owner or operator of the store, if he has a machine on a commission percentage basis, gets 50 per cent of the income of the machine; 12.5 cents out of every 25 cents that goes into the machine. The amount that he can make per month will vary with the amount of traffic that comes through his store. But he can, as I say, on the average get anywhere from, say, \$35 to \$50 a week.

Mr. Chairman: Is that per machine? I think the question was what revenue per month per machine.

Mr. Rosenfield: He stated if the man has a machine. I am responding on the basis of a machine. If he has two machines, the chances are that the income will not multiply in proportion to the number of machines, but there will be a drop off, so that if he gets \$50 a week on one machine, the chances are on two machines he may take in only \$70 to \$75.

There will not be a \$50-per-machine income as you increase the number of machines. The more machines, the lower the average per machine. So at the end of the month he can take in perhaps anywhere from \$125 or \$150 up to maybe \$200, which in most cases will take care of his rent and his electricity and permit him to stay in business. Were it not for that income he simply, on the basis of the other end of the business, could not generate enough income to keep that store open.

11:30 a.m.

Mr. Breithaupt: What is the face value of one of these machines?

Mr. Rosenfield: When they are new, anywhere from \$3,800 to \$4,200. It averages out at around \$4,000 a machine. In many of these mom and pop stores, you don't get the newest machines. An operator frequently will step down a machine, which perhaps has already paid for itself or almost paid for itself, from a prime location, perhaps an arcade location, into a mom and pop store. Therefore, it is economically feasible to operate that machine in that location, even at the lower income.

Mr. Breithaupt: Thank you. That is what I wanted to know.

Mr. MacDonald: I am attracted to the basic recommendation that has been made by the group, namely, the business licensing board. Let me tell you why I think it is an experience the committee may want to take a look at. Back in the early 1960s, a select committee was set up to look into the question of consumer credit. We found ourselves virtually invaded by people protesting what was going on in the used-car industry involving consumer credit and a lot of other nefarious practices.

We referred it to the Attorney General of the day, Fred Cass, whose initial reaction was, "Like most committees, you are

sticking your nose into things that are none of your business." I went down to the Better Business Bureau and, in no time flat, I got about 25 or 30 cases in each of four or five categories of highly questionable practices in the used-car industry. Some of them were with consumer credit not returning down payments and things of that nature, others were playing games with odometers, etc.

I fed that out to the media and it got screaming headlines for two or three weeks, and Fred Cass decided to set up an investigation into the issue. To make a long story much shorter, what emerged was--I have forgotten the exact name of it--a board that supervises the used-car industry. What happens is, if two or three complaints come into the board with regard to any dealer, he is brought in on the mat. He has to justify himself, not only with regard to consumer credit, but any practices.

I submit that the parliamentary assistant or the committee, in its final consideration that I will not be able to be a part of, might take a look at this, because I think that has been a very successful operation. The used-car industry has a potential for playing games that is perhaps greater than any other industry. At least, it has the reputation of that. I think the mechanism is there. If there is a bad apple in the barrel and two or three complaints come in, the man is up on the mat before the board.

If the same kind of thing were applied to this industry and the man did not fulfil that idyllic picture Mr. Rosenfield gives us of an arcade that provides the discipline the school is not giving and everything else, but if instead his arcade was a breeding ground for crime, or if it was an area for playing the races or for peddling dope or something of that nature and there was evidence of that, you could close him down. I think it is that kind of a mechanism and it is province-wide. I know this opens up a totally new approach to what you are attempting to do here, but, quite frankly, I think you should take a good look at it, because I think it has proven to be successful.

Mr. Breithaupt: I would just add one comment to that, Mr. Chairman, and that is that the tribunal to deal with decisions that are reached by the registrar for business brokers or for used-car dealers is already in place as well, so that might well be something worth while looking at, since we have the system already built in now that has the decision-making power and a tribunal.

Mr. Chairman: Thank you, Mr. Breithaupt. Thank you, gentlemen. There are no further members wishing to ask questions.

Mr. Crane: Thank you very much, Mr. Chairman. We have a code of ethics from our association I would like to file with you. I forgot to do it.

Mr. Chairman: That will be exhibit 20. Thank you. Now, gentlemen, I understand from the parliamentary assistant that probably the overall position and thrust of the second and third witnesses are common, that is, the Metropolitan Toronto Taxi Drivers Association and the Toronto Taxicab Brokerages

Association. If that is so, perhaps it will give everyone more time, including those groups. I have seven members, Rattle, Gleitman, Sapusak, Conway, Bresver, Bell and Hadbavny. If the seven men who are here might take chairs, I think we can get a microphone for each one.

Mr. Brandt, would it be possible for you to move closer to Mr. MacQuarrie. We have four along here and if three more people wish seats, one is next to Mr. MacDonald and two perhaps next to Mr. Brandt. If people do not wish to address the committee, then they may not need a microphone. Take your pick. Could you identify yourselves? First, the gentleman to the east beside Mr. MacDonald.

Mr. Bresver: My name is Bresver.

Mr. Chairman: B-r-e-s-v-e-r, yes. That is east.

Mr. Conway: My name is Richard Conway. I am counsel here today for the Toronto Taxicab Brokerages Association. It is one of the two groups now scheduled to speak before you.

The executive members of the association are here with me. To my immediate right is Mr. Joe Hadbavny, who is the president of the Toronto Taxicab Brokerages Association. To his right, the gentleman who has already identified himself and who is also an executive member of the association is Mr. Bresver. Sitting at the table over here--perhaps he could identify himself--is Mr. Bruce Bell, the other executive member of the Toronto Taxicab Brokerages Association.

The other gentlemen here today perhaps could identify themselves to you. They are members of the Metropolitan Toronto Taxi Drivers Association. Their president is Mr. Rick Rattle who is to my immediate left. Perhaps he can identify his associates.

Mr. Rattle: Good morning. To my left is Mr. Nicholas Sapusak, vice-president of the Metropolitan Toronto Taxi Drivers Association, and beside Mr. Bell is Mr. Paul Gleitman, past president of the Metropolitan Toronto Taxi Drivers Association.

Mr. Chairman: Fine. Thank you. Who is the spokesman for each group? Mr. Rattle, are you the spokesman for your group?

Mr. Rattle: We all have briefs this morning, sir.

Mr. Chairman: These briefs are what, five minutes each? Would you carry on, because your association is scheduled first. Would you please go through your briefs and then we will go over to Mr. Conway.

Mr. Rattle: Thank you, sir. Mr. Chairman--

Mr. Chairman: Oh, I am sorry, gentlemen, I want to point out that the Toronto Taxicab Brokerages Association has a written brief filed as exhibit 19. Mr. Rattle, go ahead.

Mr. Rattle: Mr. Chairman, members of the committee, my

name is Richard Rattle and I represent as president the Metropolitan Toronto Taxi Drivers Association.

11:40 a.m.

In regard to Bill 11, pages 10 and 11, scope of bylaw, cabs, buses, etc., clause 4(3)(c) is identical to the current Municipal Act, chapter 302, subclause 227(1)(b)(ii), as amended by Bill 195. We are flabbergasted that no changes have been recommended for this section of the act.

I would like to bring to the attention of the committee that on May 25, 1981, the Honourable Tom Wells, Minister of Intergovernmental Affairs, accepted the recommendations of the metropolitan chairman, the metropolitan council, the Metropolitan Toronto Licensing Commission, the Toronto Taxicab Brokerages Association and the Metropolitan Toronto Taxi Drivers Association to remove the exemption from the act. In effect, this would prohibit 231 taxis licensed by contiguous municipalities with the federal Toronto International Airport permit from picking up fares in Metropolitan Toronto and transporting such fares to the Toronto International Airport.

I have in my possession a letter dated October 2, 1981, from the Honourable Claude F. Bennett, addressed to a previous president of our association which I shall now read into the record. It is from the office of the minister, Ministry of Municipal Affairs and Housing, October 2, 1981, to Mr. Zoltan Nemeth, president, Metropolitan Toronto Taxi Drivers Association, 4 Gifford Street, Toronto, Ontario:

"Dear Mr. Nemeth:

"Thank you for your letter of September 15, 1981, regarding taxi regulation in Metropolitan Toronto. It has been made clear to me that the Metropolitan Toronto taxi drivers and owners are very concerned that taxis licensed in other municipalities with airport permits are able to pick up fares in Metropolitan Toronto, thus depriving Metro taxis of fares that they consider to be legitimately theirs.

"Let me emphasize that there is no intention to back away from the promise made by the Honourable Tom Wells last spring to take steps to correct the situation. However, we are faced with two problems. The first is that the schedule for legislation this fall is very tight, leaving no time to debate additional legislation this session. The second is that the issue, as you know, is a very complicated one.

"We want to have time to consult with all affected parties and to ensure that the best and fairest solution is reached before proposals are put forward in the spring.

"Yours sincerely, Claude F. Bennett, Minister, MPP, Ottawa South."

Based on these promises made by two ministers of the crown, I must again emphasize that we are shocked there is absolutely

nothing in Bill 11 that ensures the best and fairest solution promised by Mr. Bennett in that letter I have just read to you.

Is this the best and fairest solution? With all due respect, I ask this committee on the administration of justice, is this justice? The representatives of the Toronto taxi industry are also appalled that, seemingly, not one of their recommendations was taken into consideration.

As you know, the first reading of this proposed bill was March 11, 1982, and the second reading July 5, 1982. The metropolitan chairman and the metropolitan licensing commission met with Mr. Rotenberg, parliamentary secretary to the minister, on April 26, 1982.

On May 3, 1982, there was a subsequent meeting which included the Metropolitan Toronto Taxi Drivers Association, the Independent Cab Owners' Association, the Toronto Taxicab Brokerages Association and the advisory committee to the metropolitan licensing commission. They met with Mr. Rotenberg, a united front, united in their recommendations.

We would hope that before third reading of this government bill some concrete results would take place as a result of these consultations. We are also aware that Mr. Rotenberg met with the other concerned parties. As it at present stands, Bill 11 is tailored to their needs and requests, ignoring our needs and requests completely. We find it highly inequitable that the rights of over 10,000 licensed Toronto taxi drivers be dictated to by a very vocal minority outside Metropolitan Toronto.

As I am sure you are aware, this is a highly contentious issue throughout the Toronto taxi industry, an emotional issue and a potentially volatile situation.

At this time, I would like to reiterate for your consideration the position of the Metropolitan Toronto Taxi Drivers Association. As we have in the past and will continue to do so, we recommend the removal of the exemption from the act. We recommend that only taxis licensed by Metropolitan Toronto be allowed to pick up fares in Metropolitan Toronto. Furthermore, we recommend that the 231 taxis with the federal permit not licensed by Metropolitan Toronto be allowed to pick up fares only from the municipalities that licence them and the Toronto International Airport.

The intrusion of these taxis into the Metropolitan Toronto area has created a dire economic problem for the Toronto taxi industry, robbing us of literally hundreds of thousands of dollars a week. The presence of 195 limousines with the federal permit licensed by the city of Mississauga further exacerbates this problem. The Toronto taxi industry seeks absolutely nothing vis-à-vis the pre-arrangement from the outside municipalities of the Toronto International Airport. Natural justice is all we seek.

In conclusion, the government of Ontario has failed to honour its commitment to the industry, a fact which must be brought to the public's attention. Bill 11, which is now under

your scrutiny, offers no solution whatsoever to this very serious problem. We would hope these hearings would be able to offer a remedy to this very grave injustice.

Mr. Sapusak: I am Nicholas Sapusak, vice-president of the Metropolitan Toronto Taxi Drivers Association.

Mr. Chairman, distinguished committee members and fellow industry guests, I bid you all good day. I wish to say it is a pleasure to be here and an honour for me to be able to speak.

I am sure everyone here is aware of the hard economic times this country is experiencing and the hardships people must be faced with, record bankruptcies, foreclosures on mortgages, unemployment, crime, and so on and so forth.

As a direct result of the provincial legislation superseding existing municipal bylaws, we, the cab drivers, are living in double jeopardy. Bill 195, section 377 of the Municipal Act, the section which concerns us at the moment, being the culprit and the topic for the discussion here today, enables taxis and so-called limousines to rape Toronto taxis of revenues we feel rightfully belong to the Metropolitan Toronto taxicab drivers.

Section A deals with the limousines and section B with the out-of-town taxis. In grouping both sections of this act, the problem spells Toronto International Airport permits, 426 to be exact. Such legislation allows these Toronto International Airport operators to conduct business within a municipality in which they were not licensed in the first place. This legislation allows each and every one of the 426 TIA permit operators unequivocal guarantees to solicit our fares going back to the airport or elsewhere.

These rights are not being experienced by Toronto taxis. In fact, if any Toronto cab drivers infringe on the municipalities in question, they are subjected to police harassment and are subjected to a minimum fine of \$250 and a maximum penalty of \$2,000. This situation antagonizes our drivers. Where is the fairness? Do these people not believe in sharing what they have? They obviously feel we should. This is wrong. Not only is it wrong, but unjust.

These people operate freely throughout our city. They enter into agreements with hotel staff re kickbacks, etc. It seems our business is being sold to the highest bidder. They even have the audacity to sit on our cab stands and present the fickle finger of fate when pulling away with our fares.

On any given day prime locations in the downtown core are covered by them, for example, 700 University Avenue, the Hydro building; 380 University Avenue, the American consulate; 383 University Avenue, the Bell Canada building, just to name a few, and there are many more.

These irregularities shall not be tolerated much longer. We, the cab drivers, feel our rights to do business within our municipality have been violated. Confrontations between our cabs

and theirs occur frequently. It is feared that a full-scale war is brewing, for our patience wears thin during the long hot summer days. It is only a matter of time before the smouldering fire reaches flashpoint, causing a flame of enormity. Does anyone here recall the situation in Montreal when the cabbies there became outraged?

11:50 a.m.

We, the Metropolitan Toronto Taxi Drivers Association, are hopeful that solutions to this ongoing problem may be found fairly by removing the exemption from this bill. By doing so, obviously the TIAs will no longer be any concern to us. We wish to conduct our business where we are licensed and they in theirs. Therefore, an acceptable settlement will have been reached.

In conclusion, I wish to stress the fact that there are approximately 9,000 to 10,000 Toronto taxi drivers operating 2,538 cabs. There are approximately 1,000 drivers with TIA permits and 550 limo drivers operating 195 TIA permits. I am not aware of any situation where a minority is able to dictate to the majority. Is this justice in this democracy of ours? Does this licensing act not discriminate against the cab drivers of this city?

Mr. Gleitman: Mr. Chairman, members of the committee, my name is Paul Gleitman. I am past president of the Metropolitan Toronto Taxi Drivers Association, a director of Co-op Cabs, a major brokerage here in Toronto, a member of the advisory committee to the Metropolitan Toronto Licensing Commission and a concerned Toronto cab driver.

The reason for listing all these affiliations is not for self-glorification, but rather to point out to you that in whatever capacity I have served or serve in the Toronto taxi industry, there is a united front concerning the problems of the out-of-town taxis. We are all in agreement on this point.

What you have heard from Mr. Rattle, Mr. Sapusak, the Independent Cab Owners Association, what you will hear from me, from the brokerage association shortly and from the Metropolitan Toronto Licensing Commission tomorrow is the same thing: remove the exemption from the Municipal Act. Remove the exemption that allows cabs with the TIA plate, licensed by municipalities other than Metro, to pick up fares in Toronto, transport them to the airport legally and take them anywhere else illegally. As long as this exemption exists, proper policing of the Metropolitan Toronto taxi industry is impossible.

There is absolutely nothing in this Bill 11 that meets this demand. There is nothing in Bill 11 that even resembles the promise made by Tom Wells on May 25, 1981, to remove the exemption from the Municipal Act. There is nothing in Bill 11 that resembles the promise made by Claude Bennett in the letter read to you earlier by Mr. Rattle. Two senior ministers of the government of Ontario have made a promise to the Toronto taxi industry that has yet to be honoured. Even the more ambiguous promise made by Claude Bennett has not been lived up to by at least an equally ambiguous Bill 11.

I personally accepted Mr. Bennett's letter at face value. In fact, I accepted it from Mr. Rotenberg and persuaded the board of directors of the Metropolitan Toronto Taxi Drivers Association to call off a massive industry-wide demonstration scheduled for October 13, 1981. My predecessor at that time resigned in protest. He had no faith in the system. I did. After reading Bill 11, I now would like to state that he was right all the time. As far as we are concerned, the government of Ontario has made a promise that it has broken. We cannot accept the premise that the government is not responsible for promises made by individual ministers. Does the left hand not know what the right hand is doing?

The very meaning, the purpose of this particular committee, will be equally impugned if it does not right the wrongs perpetrated by the government, for it is justice that we seek, natural justice, and we hope that we can find it here. What is our concept of natural justice? It is well documented. Remove the exemption from the act. We seek absolutely nothing from the peripheral regions or from the Toronto International Airport for that matter.

Natural justice is an act that allows taxis to pick up fares only in the municipality which licenses them, or at the Toronto International Airport, if they possess the Toronto International Airport permit. Natural justice is the keeping of a promise.

Bill 11 is not natural justice. It is a broken promise. For that matter, it is an accumulation of broken promises, piled upon a bad law dating back now close to five years. Natural justice is removing the exemption from the act.

Mr. Chairman: Mr. Conway, would you carry on? We will get the questions after the whole thing.

Mr. Conway: As I think I indicated before, I am here today as counsel to the Toronto Taxicab Brokerages Association. The brokerages association represents almost 2,200 of the 2,500 taxicabs that are licensed in Metropolitan Toronto.

The submission that we are going to make today is restricted to one very small section of Bill 11. It is subsection 4(3), extracts of which have been included on page 8 of exhibit 19, a submission made by the brokerages association.

Those particular provisions are virtually identical to the provisions currently in the Municipal Act, section 227 of the 1980 revised statutes.

The reason for the brokerages association's presence here today is to ask this committee for its assistance in removing from Bill 11 a particular exemption that is counter to the general scheme and thrust of the act. The brokerages association's opposition to this particular provision is long-standing. In fact, the opposition from virtually all elements, all quarters of the taxicab industry in Metropolitan Toronto, is long-standing.

The taxi industry is perhaps a little unlike some of the other industries which Bill 11 proposes to regulate. With the

committee's indulgence, I would like to just cover a little bit of the history leading up to this exemption, so that the committee might understand the nature of the brokerages association's opposition to this particular provision of the bill.

The taxi industry is currently regulated on what is called the point of pickup basis. Unlike many other businesses that operate in municipalities, taxicabs by their very nature are mobile. The Legislature, in the Municipal Act, decided that the jurisdiction over cabs would be fixed on the basis of where a fare originates. It is possible, for example, for a taxicab to work in Vaughan township on one day and the city of Toronto the next. It is possible for a brokerage to dispatch a cab to a jurisdiction where that brokerage is not located.

Because of this mobile nature of the industry, the Legislature decided that municipal regulation would be determined on this point of pickup basis, where a fare originates. That fixes municipal jurisdiction. That is the general thrust of the legislation, and that particular thrust, that particular aspect of the legislation, is not something with which the brokerages association disagrees. It has turned out to be workable, it is simple, and it is a sensible principle. Municipalities should regulate cabs and have control over cabs on the basis of where a fare originates.

12 noon

A problem arose because of the Toronto International Airport. Though it is run by the federal government, it happens to be located in Mississauga. In 1978 the federal government, through regulations, established a system wherein the only taxicabs that could pick up fares at the airport, passengers that had arrived from destinations all over this country and from other countries, were cabs that had been issued licences or permits by Transport Canada. Only 300 such licences were issued. Only 69 of those licences were issued to cabs licensed in Metropolitan Toronto.

This gave rise to a particular potential problem because the airport is located in Mississauga. Those cabs who had airport plates but were not licensed by Mississauga and who were picking up passengers at the airport might technically be under Mississauga bylaw control. To deal with that particular problem the Legislature enacted an amendment, an exemption, to the general scheme of the act which provides for municipal control on a point of pickup basis.

That particular amendment said quite simply that Mississauga bylaws would not apply to cabs not licensed in Mississauga if they were authorized to pick up at the airport and they were picking up a fare at the airport. So far so good. The Toronto taxicab industry, the brokerage association in particular, took no exception to that particular exemption and does not take exception to that particular exemption today before you.

However, when the legislation was finally enacted, both the point of pickup bylaw, the point of pickup legislation establishing for the manner in which municipalities would exercise

their jurisdiction over cabs and the exemption enabling taxicabs not licensed by Mississauga but bearing this Transport Canada plate to pick up at the airport and not be subject to Mississauga bylaws, both those aspects of the legislation were brought to the Toronto taxicab industry and the Toronto taxicab industry was consulted on those two particular aspects of the legislation.

However, when the legislation was finally enacted, there was another exemption that was grafted onto the legislation about which there had never been any consultation whatsoever with the members of the Toronto taxicab industry. That particular exemption confers a special, unfair advantage in the minds of the members of the Toronto taxicab industry on a select few taxicabs who operate outside, or who are licensed outside the municipality of Metropolitan Toronto. As soon as that particular exemption was passed, it immediately raised the ire of the members of the industry and opposition to that particular exemption has been almost continuous since the day it was enacted.

What that particular exemption did was this: The exemption permitted any taxicab that had been issued a Transport Canada, Toronto International Airport permit the right to pick up in the city of Toronto if that cab was taking its passengers back to the airport, whereas Toronto cabs, all but the 69 that have these Transport Canada plates, are not allowed to pick up passengers at the airport when they drop them off there. Those 231 cabs that were not licensed in Metro but who had the Transport Canada plates are permitted to pick up, not only at the airport, but are permitted to pick up in Metropolitan Toronto even though they are not licensed here.

As I have indicated, the opposition to that particular exemption, about which there was no consultation with the members of the industry, has been long standing. I would like to address very briefly why the industry in Metropolitan Toronto is so upset about that particular exemption. There are primarily two reasons, aside from the nonconsultative manner in which that particular exemption was enacted.

Mr. Chairman: Excuse me, just a comment, for my sake, if for no one else: The taxi drivers association, Mr. Rattle in particular, referred to one exemption, which I take it is paragraph 4(3)(b)(i). You are speaking of two exemptions. Would you please clarify that? He was speaking of one. You are speaking of an additional one?

Mr. Conway: Mr. Chairman, I stand to be corrected on this, but I feel quite certain that the exemption to which Mr. Rattle and other members of the taxi drivers association have referred is the same exemption to which I am referring. If I can refer you to page 7 of exhibit 19, the brief that was submitted by the brokerages association, you will see extracted there the pertinent or relevant sections of Bill 11.

You can see there are some annotations made on the right-hand side of the page. If I can refer you to the annotation labelled [A], "Authority for municipal regulation of taxicabs on a point of pickup basis," the first clause of subsection (c) confers

the general thrust of the legislation. That is the origin of the point of pickup control that municipalities have.

It says that any of the bylaws passed by municipalities regulating fares, limiting the licences given to cabs, may "provide that the bylaw, including any provisions for establishing fares or limiting the number of cabs, shall apply to the owners and drivers of cabs engaged in the conveyance of goods or passengers from any point within the municipality to any point outside the municipality."

The first clause says that if you pick up a passenger in a municipality, then that municipality has jurisdiction over you. I explained the anomaly that existed with the Toronto International Airport. The international airport officials, through Transport Canada, have issued permits to 300 cab drivers, regardless of where they are licensed, saying they can pick up at the airport. But the airport is in Mississauga. So technically, if you are a non-Mississauga cab picking up under federal Transport Canada authorization a fare at the airport, you would be picking up at a point of origin in Mississauga and you might be liable to Mississauga control. It was for that reason that the exemption which is indicated as [B] was passed.

Mr. Chairman: Yes. You have no disagreement with that?

Mr. Conway: No.

Mr. Chairman: I am moving on to the next two exceptions you refer to.

Mr. Conway: There is only one other exception that I am referring to, and that is the one labelled [C] on page 7.

Mr. Chairman: So you are saying the same as the taxi drivers association. You do not take exception to the first exception. You take exception to the second exception.

Mr. Conway: Exactly. I will try to be as brief as I can, because I think we have a number of very expert members of the industry here and the members of the committee may well wish to address questions to them.

The reason for our opposition is twofold, as I said, aside from the nonconsultative manner in which that particular exemption came into being. The first is that it is inherently unfair. It is discriminatory. Only 69 Metropolitan Toronto licensed taxicabs are eligible to pick up fares at the airport out of 2,538 taxicabs licensed by Metro.

One thing is not in dispute. It has been the subject of federal studies, and I don't think anyone will raise issue with this. Eighty per cent of the taxicab business at the airport either comes from Metropolitan Toronto going to the airport, or when it is picked up at the airport, is bound for Metropolitan Toronto.

Eighty per cent of the cab business at the airport is

Metropolitan Toronto business, but 97 per cent of the Metropolitan Toronto licensed taxicabs, out of those 2,500 taxicabs, are not permitted to pick up there. So be it. But what about the other 231 taxicabs that are not licensed in Metro, but have the Toronto International Airport Transport Canada plate? Not only can they pick up at the airport and bring those fares into Toronto, which is what the exemption permits them to do, but they can pick up in Toronto and take fares back to the airport.

12:10 p.m.

Mr. Chairman: Mr. Conway, perhaps I put it in an unfortunate way. There are two situations, rather than two exceptions to the latter situation. The latter exception, which you disagree with, includes two situations: Those 80 or 90 or whatever number of cabs that are federally licensed can pick up in Toronto, and all those other Mississauga cabs can also pick up in Toronto. Those are two situations with both of which you are disagreeing under the one exemption. Is that correct?

Mr. Conway: Could you run that by me again? I'm not convinced that is accurate.

Mr. Rotenberg: The only thing you are objecting to, I gather, is that 231 cabs not licensed in Metropolitan Toronto can pick up in Metro to go back to the airport?

Mr. Conway: Exactly.

Mr. Rotenberg: That is the only thing you are objecting to in the bill. Is that correct?

Mr. Conway: That's correct.

Mr. Chairman: That one situation?

Mr. Conway: Yes. That is the thrust of, if we can say it, the first objection to this particular provision of the bill. It is unfair and it is discriminatory.

Eighty per cent of that airport business either originates in Metro or is bound for Metro, but Metro cabs, with the exception of that very small group, 2.7 per cent of them that happen to have the airport plates, when they drop off at the airport, come back empty. Yet these other 231 cabs that are not licensed in Metro, when they drop off in Metro, are able to pick up fares and take them back to the airport.

That exemption is contrary to the entire scheme of the act, the notion that municipal control or jurisdiction will be exercised on a point of pickup basis. That is what the brokerages association objects to.

The second front of the opposition has to do with the fact that that particular exemption has led to serious abuses. It exacerbates what has been referred to as the bandit cab problem; that is, cabs not licensed in the municipality that come into the municipality and pick up fares, and either take them out of the

jurisdiction or even take them to other points within the jurisdiction.

This particular exception to the legislation gives a foothold to unscrupulous operators outside of Metro to work the Toronto streets illegally. It simply makes it easier for them. They flout the law, they pick up fares here and drop them off in Metro, yet they are not licensed by Metropolitan Toronto. What that does is quite literally rob legally licensed Metropolitan Toronto taxicabs of part of the opportunity they should have to earn an honest living in the municipality where they are legally licensed.

Mr. Rattle and the other members of the taxi drivers association here today referred you to a meeting that was held by the Minister of Intergovernmental Affairs, Thomas Wells, with municipal politicians, members of the taxicab industry and members of some of the regulatory authorities. It was a public meeting, and the minister at that meeting made a clear, unequivocal commitment to remove this particular exemption from the legislation, the Municipal Act. That commitment was reiterated in the fall of 1981 by the Minister of Municipal Affairs and Housing, Claude Bennett. Yet it is now July 1982 and the industry, rather than see that exemption removed from the legislation, sees it about to be enshrined in Bill 11.

It is exactly and only for that reason that the brokerages association is here today. While I was sitting in the audience earlier, I heard some of the representations ask this committee to change the whole scheme of the legislation in some respects. The brokerages association is not making that request. It is asking this committee to recommend that a very sharp and precise knife be taken to the last seven sentences of the clause I have referred you to, clause 4(3)(c) of Bill 11, and simply remove it from the legislation.

When it is removed, the legislation will then embody what it is supposed to embody, a scheme of legislation intended to affect equitably and equally all taxicabs in the province. That scheme is simple and it works. You are regulated by the municipality where you pick up fares, and that is all the brokerages association is asking for.

I know I have gone on at some length. The association wants to thank you for the opportunity to address the committee. The members of the executive here today--and I to the extent I can be of some assistance--would be more than pleased to respond to any questions you might have.

Mr. Epp: The question I have is, to the best of your knowledge, Mr. Conway, why was this exemption, the one you are taking exception to, extended to those 230-odd drivers so that they could pick up fares and deliver people from the airport to Toronto and then return and pick up fares and take them back to the airport, or I suppose they could take them somewhere else?

Mr. Conway: I am unable to respond to that question.

Perhaps some of the other members of the executive can. It was part--

Mr. Epp: What clout did they have? Why was this extended to that particular group when it was obviously completely contrary to everything else in the legislation and done without any consultation with you?

Mr. Chairman: Mr. Epp, you will remember the office of the mayor in Mississauga was trying to contact the Mississauga Taxi Drivers Association to see whether it wished to make a presentation. Today we have in the audience, as I mentioned to you, two men from the bureaucracy of the city of Mississauga. We also have Mr. Cowan, the president of the Mississauga Taxi Drivers Association.

Does the committee wish to hear these people to help to explain or do you wish the Metropolitan Toronto Taxi Drivers Association to complete its presentation? What does the committee wish?

Mr. Breaugh: I think it would be sensible if we heard this delegation and, at the conclusion of that, if you want to extend the invitation to any other group who wants to appear before the committee, that seems to be a rational way to proceed.

Mr. Chairman: Fine. Carry on, Mr. Epp. If you were inclined to ask some of the Toronto groups for answers that could better come from the Mississauga group, we do have a Mississauga group available from whom to get those answers.

Mr. Epp: I appreciate that, Mr. Chairman. I am looking for the answer to this question, because it seems to be at the heart of the problem. I don't know whether these people are the best to answer it. Maybe the Mississauga group should, or perhaps the parliamentary assistant knows. Maybe he can tell us where the clout came from to give this group this special exemption, which was added on at the last minute without any consultation whatsoever.

Mr. Chairman: Perhaps Mr. Rotenberg could summarize some of the situations that could be either agreed or disagreed with by the groups.

Mr. Rotenberg: In answer to Mr. Epp's specific question, I think we discussed it yesterday. The airport taxi situation was deemed to have been in chaos before the 1978 regulations came in via the airport. The airport, in its wisdom, together with the federal government, set up a system it felt would remove the chaos and rationalize the system and give better service to all the airport passengers. One of the parts of the system was that there would be a limited number of taxicabs that could serve the airport both ways.

Basically, I am not commenting on the merits of it. It was done at the request of the federal government and the airport management. They wanted these 300 cabs we have licensed to be able to go to and from the airport from any municipality, not just Toronto. A Toronto cab can take a fare, let's say into Brampton,

and bring the fare back from Brampton as well. It was the federal government's contention that these 300 licensed cabs should be able to, of course, within their jurisdiction, take the fares from the airport to any municipality into which they can go, which is in accordance with our legislation, and also should be able to bring the fare back to the airport. Basically it was at the request of the federal government, those who were trying to bring order into the airport situation some four or five years ago, that this legislation was enacted.

12:20 p.m.

I have one other comment in response to what the delegation has said. It is true that Bill 11 re-enacts exactly the same procedures as were in previous legislation. This does not, and I want to stress this, imply a decision by the ministry. It simply indicates this bill has been put forward for discussion and any amendments would be done in conjunction with this bill. Bill 11 does not represent a decision by the ministry to say yes or no to the request of Metropolitan Toronto or to Mississauga.

It puts the matter forward for discussion. The decision will be made by the government, and eventually by this committee and the Legislature when the bill is enacted. The time for amendments to legislation is during committee discussion. I would just indicate to the Metropolitan Toronto people that the fact that Bill 11 is printed in this form is not a decision by the ministry or by the government.

Mr. Breaugh: Who drafted this bill?

Mr. Rotenberg: The bill is drafted by the government, which lifted the sections from the previous bill, but indicated that the matter--

Mr. Breaugh: So you wrote it, but you are not responsible for it.

Mr. Rotenberg: No, we wrote it, Mr. Breaugh, with respect, and we are responsible for it, but it was written in a form lifted from the previous legislation with the understanding that that section was still under discussion.

Mr. Breaugh: May I ask where it says that?

Mr. Rotenberg: It doesn't say that. I am saying that to you.

Mr. Chairman: In fairness to the parliamentary assistant, he made it very plain at the beginning of these sittings that this was tentative and he did not want clause by clause going until the fall and it was wide open for amendments.

Mr. Breaugh: Wide open for amendments?

Mr. Chairman: That was made very plain. His ears were open for potential amendments.

Mr. MacDonald: May I ask the parliamentary assistant a question? Does the federal government have the power to step in and breach the point of pickup principle? Are you helpless? Do you have to live with that?

Mr. Rotenberg: No. The federal government can set the regulations within the airport.

Mr. MacDonald: Right.

Mr. Rotenberg: The federal government cannot dictate to us the particular ruling we may make on this. As I said, Mr. MacDonald,--I am told, because I was not part of the ministry in those days--this section of the act was brought in in 1978 at the request of those who were trying to rationalize the airport. We did not have to accede to that request, but the provincial government did. The provincial government has the power to change that rule without reference to the federal government if it so desires.

Mr. MacDonald: That is the very point I wanted to make because the thrust of your comment was that you had to go along with the federal government.

Mr. Rotenberg: No. If I gave that impression, I certainly did not mean to. I said we did it at the request, not at the insistence, of the federal government and we have the option to do so or not to do so.

Mr. MacDonald: Okay.

Mr. Epp: Coming back to this point, what is the government's current intention with respect to this? I hope you have not been sleeping. You must be going in some direction in regard to what you are going to do. To the best of your knowledge and ability, what do you expect the government to do about this section?

Mr. Rotenberg: The government, if I can use that word in its broad sense, has not yet made a decision on what to do with this section.

Mr. Epp: No. I did not ask you whether you had made a firm decision. I asked you what you expect the government to do about this?

Mr. MacDonald: What are you going to recommend?

Mr. Rotenberg: Mr. Chairman, as yet neither the ministry nor myself have made a firm recommendation to government. We are looking at all the briefs that have come in to us and we are trying to see if there are alternative ways of handling the problem.

Mr. Epp: You are not leaning in any particular direction?

Mr. Rotenberg: At this point, the decision is open.

Mr. Epp: You are not leaning in any particular direction?

Mr. Rotenberg: No.

Mr. Epp: You don't expect to come to a decision or anything of this nature in the next two or three months?

Mr. Rotenberg: Yes, we expect to. When we are dealing with the clause by clause of this bill, we expect to have a recommendation from the government as to how they deal with this problem. It may not be how Metropolitan Toronto cabbies want to do it. Mississauga had a different suggestion for an amendment to this bill. It may be one or the other, or neither. It may be something entirely different. We do not yet have a recommendation.

I am very pleased these hearings are here to get this all out and to get some indication from other members of the committee and members of the Legislature as to how they feel about this problem. When you have heard, as I hope you will, the other side of the situation, then you will have a full picture and possibly members of this committee will be able give some indication of how they feel about the problem.

Mr. Epp: I recognize there is a real problem here because, as one of the members pointed out yesterday, if you look at conservation, it does not make sense that a cab goes there, drops somebody off and somebody there picks that person up and takes him back over there. You have got cars going back and forth empty, at least one way. From the standpoint of conservation and efficiently operating a business, that is no way a person would run a business. You would want to take somebody to the airport and you would want to bring somebody back. That is the way to run it efficiently. If you want to create jobs and so forth, then you run one way empty and full the other way. That is where part of the problem is.

Mr. MacDonald: The principle is not being applied evenly.

Mr. Epp: No, it is not being applied evenly. That is the whole thing. It is not being applied evenly with those 69 drivers you were talking about. They have accepted that.

Mr. Chairman: As Mr. Brandt pointed out, the PCV licence often states--

Mr. Rotenberg: Mr. Chairman, in response to Mr. MacDonald, although within our own jurisdiction we can deal with this problem, one of the problems is that we have no jurisdiction over who gets Toronto International Airport plates from the Department of Transport. We have no jurisdiction over that whatsoever. We have had some discussions with the federal government and, as a result of these hearings and what we hear, we hope to have some further discussions with the federal government, but I do not know if they will be in any way productive in solving the problem.

Mr. Epp: I do not want to prolong this because I know other members have questions, but you might look at what they do in other airports across Canada.

Mr. Rotenberg: We have been looking at other airports in Ontario and across Canada. There are a number of different rules in different airports.

Mr. Breaugh: Setting aside the previous arguments, it strikes me that the drafting of a new bill of this kind allows the government an opportunity to put forward the clean-slate approach. If there were problems, difficulties and things that happened in the past that did not resolve themselves, when a government drafts a new bill of this kind, it has an opportunity to put forward its ideal thoughts on what the legislation in theory ought to be.

I have gone through this bill. There are perhaps 100,000 people or more who will be affected by this bill. Nowhere else in the bill can I find an exemption clause like this. Given what Mr. Wells and Mr. Bennett said, I would like to ask the parliamentary assistant why this bill was drafted in a way that continues to give special status to some 231 taxicabs.

If I accept what you said at face value, that you want to open it up for argument, the logical and consistent way to do that is to draft a bill that treats everybody in Ontario and every business equally. In every other section of this bill, it seems to me that is the way it is drafted except in this one case. In the drafting of the bill, in putting it forward for argument, why does that exemption still remain in the bill?

Mr. Rotenberg: The previous legislation had that clause in the bill. Before coming to a final conclusion on how we should deal with this matter, it seemed the simplest way was to reiterate the clause in the present bill because the government has not yet made a decision as to whether or not this clause will be amended.

Mr. Breaugh: This bill extensively renovates the Municipal Act. It changes it in several ways. It brings in whole new categories and offers different procedures. Here is a problem that has been identified, to which there are two sides to the argument. In drafting general legislation like this, it seems unusual to me to find an exemption clause for one group and no exemption clauses for anybody else in any other business anywhere in Ontario.

Is there an overriding problem here? Looking at the face of the argument, I would agree with Tom Wells, that this is a problem that perhaps we backed into. I have great difficulty understanding why this one group gets targeted for an exemption and nobody else does and why, in the redrafting of this one, that exemption is not removed. It seems to me that is just fair play.

If there is an overwhelming argument of a legal nature, that the federal government has you by the legal coattails and you cannot do anything about it, I would like to hear that explanation. If there is an overwhelming economic argument that these 231 cabs are such great consumers of fuel that it will destroy the national energy program or something of that nature, let me hear it. I do not hear it. What is the basis for continuing the exemption?

12:30 p.m.

Mr. Rotenberg: Mr. Chairman, I think this argument is not really productive. We are here to hear and question the witnesses. I have indicated that the government has not come to a decision as to whether or not this exemption will be removed or whether the request from these gentlemen from the Toronto taxi cab industry will be acceded to. I have indicated that after we hear all the deputations the government will be making a recommendation to this committee. To argue over procedure at this point between myself and you is not productive. I think we should be hearing from these witnesses and putting any questions to them.

Mr. Breaugh: I am not arguing procedure. Let me ask Mr. Rattle then. There is something going on here I do not know about and I would like to find out what it is. Do you know what it is that managed to continue an exemption for 231 cabs that nobody else in Ontario has managed to retain? There has to be an overwhelming reason. What is it? Do you know what it is?

Mr. Rattle: I wish I could answer that for you, sir.

Mr. Breaugh: You do not know either?

Mr. Rattle: I do not know why that exemption is still there, why it has not been removed. As I stated in my brief, I cannot understand a very vocal minority pertaining to 231 taxis licensed with a TIA permit and 195 limousines, which also intrude upon our city, licensed by the city of Mississauga with TIA permits.

Mr. Breaugh: Let me ask Mr. Conway the same question. Do you know why some 231 cabs can operate in the city of Toronto without a Metro Toronto cab licence? How is that possible?

Interjection.

Mr. Breaugh: I do not know who this gentleman is, but I would very much like to get him in front of the committee and give him a chance to speak.

The Vice-Chairman: We will give the gentleman a chance in a moment. Mr. Breaugh, if you could confine your question to Mr. Conway, let us get on with this.

Mr. Breaugh: I want to point out to you, Mr. Chairman, I asked my question of Mr. Conway and I would appreciate it if you would give him a chance to answer it.

The Vice-Chairman: I will give him a chance to answer it.

Mr. Conway: As I think I indicated before, the taxicab industry of Metropolitan Toronto was not consulted about this particular exemption. We are unable to answer your question. Our submission is a simple one: restore the integrity of the point of pickup legislation to the bill. Remove the special exemptions. There cannot possibly be any justification for them. If there is a justification for it, we have not yet heard it.

Eighty per cent of the airport business is Metropolitan Toronto business, yet these 231 cabs, not licensed in Metropolitan Toronto, are permitted by this special exemption to pick up fares in Toronto and take them into the airport. That has provided a foothold for unscrupulous taxicab operators either to pick up in Toronto and drop off in Toronto or to pick up in Toronto and drop off elsewhere when they do not even have the federal Transport Canada plate.

Mr. Breaugh: Could you just elaborate slightly. You have used the word unscrupulous a couple of times now. Just exactly what do you mean by that? Do you mean that these are cabs operating in Metro without a Metro licence? Is that what you mean?

Mr. Conway: The exemption may confer a special advantage, but the advantage that it confers, if properly exercised, is legal, that is, if you have one of the 231 cabs not licensed in Metro but having a Transport Canada plate, you legally can pick up in Toronto a passenger who is destined for the airport, but you cannot do anything else. You cannot pick up a passenger in Toronto who is destined for some location other than the airport.

It is the experience of the members of the industry that cabs that have the federal airport plates are doing just that. Not only are they taking advantage of the special exemption and the special advantage conferred upon them, they are going one step beyond it and they are illegally picking up fares in Toronto and dropping them off in Toronto. In addition, cabs bearing no federal plates whatsoever are coming into the city of Toronto, into the Metropolitan Toronto area, and doing the exact same thing. Because this particular exemption allows 231 cabs into the city to pick up fares and take them back to the airport, the thin edge of the wedge has been created and it makes it far easier for unscrupulous cabs to operate in the manner I have described.

Mr. Epp: Can I just get a very quick supplementary? I really have difficulty here. We have 231 people out there coming in to the city of Toronto and getting fares, etc., and there is not a soul in this room, particularly the people here, who can for any single reason tell us why this is happening? The parliamentary assistant cannot. Nobody can tell us.

Mr. Breaugh: We do have a couple of other people in the audience here who will surely have an answer.

Mr. Epp: I really have difficulty. Either somebody is avoiding the question, or whatever the case is, and you, Mr. Conway, through three or four years, should have heard some rumours why this is happening and you cannot tell us. Nobody can tell us. I have difficulty with that.

Mr. Chairman: Mr. Epp, I just point out that the Mississauga people are here. Can the Mississauga people shed any light on this?

Mr. Breaugh: The only thing I want to avoid here is that I do not want a big hassle back and forth. I would like to hear these witnesses and then I would like to hear a couple of people in the audience who have indicated in various forms that they have an answer to this. I want to give them a chance to do it, but I want to make sure these people have a chance to have their day in court and say their piece.

Mr. Conway: I would like to make one additional comment. Although we have mentioned the bandit cab problem where cabs scoop fares illegally, I hope the committee's attention would not be focused too much on that problem because I am concerned that it is going to be made out to be a red herring, that people are going to say that is simply an enforcement problem and the Metropolitan Licensing Commission can enforce it.

Although it is the position of the brokerages association that this particular exemption exacerbates that problem, the thrust of their opposition is simply that the exemption is unfair.

Mr. Breaugh: Let me just pursue this unscrupulous stuff a bit further. You seem to have a pretty solid argument, at least in my mind, about the exemption itself. Where I see a little haze entering the picture is when you talk about what you just did, bandit cabs or people who have a legal licence to transport people from Toronto to the airport doing something other than that, then I think we are into a bit of hot water. I am not sure whether that is really part and parcel of this bill because it strikes me they are breaking this bill and any other bill we have as well. They are doing some illegal act and it is a matter of trying to apprehend them.

The basic gist of your argument is that because legally, as a regular course of business, non-Metro cabs are in and out of the city, that is the beginning of the problem.

Mr. Conway: Yes.

Mr. Breaugh: So we are not addressing ourselves to any kind of underground cab system here or anything else. The fact is these cabs are on Toronto streets quite legally, at least in some instances operating properly, and have created a very difficult policing problem by having them there.

Mr. Rotenberg: I would like to clarify one point. Before 1978, cabs from outside of Metropolitan Toronto could come into Metropolitan Toronto, airport plates or not, if it was alleged they were taking the fares back to their own municipality, that is a Richmond Hill cab could come in to Town and Country Square on Yonge Street north and take fares back.

Although the 1978 legislation was more negative from the point of view of the Metropolitan cabs, it was very positive because the 1978 legislation was the point-of-pickup legislation. In 1978 we amended the legislation which indicated that only a cab licensed in the municipality could pick up in that municipality. Before that, airport cabs, other cabs, Mississauga cabs would come

in and say, "I am going back to Mississauga; therefore I can pick up a fare in downtown Toronto." So it was wide open from the point of view of point of pickup.

The 1978 legislation blocked all of that except the one part of it where cabs went back to the airport. Just to indicate that it was not just the airport exemption, the 1978 legislation brought in the point-of-pickup regulation which allowed Metropolitan Toronto Licensing Commission and others to prevent non-Metro cabs from picking up in Metro.

Mr. Breagh: To be fair, it is still legal for somebody from outside Metro to drive his cab on a Metro street.

Mr. Rotenberg: But not to pick up, to bring a fare into Metro.

Mr. Breagh: The other part of that is that I think it would be next to impossible to police anything along that line. If a cab brings me to downtown Toronto from Oshawa and somebody happens to be on the sidewalk there and sees a vehicle which looks very much like a taxicab to the ordinary citizen, he might just pop into the back seat and the cabby might just say, "Sure, I will take you. What the hell." That is going to be a very tough thing to police.

The problem they are trying to point out is that where you have given a licence to an outside-Metro cab to come in here anyway, on a very legal basis, that just complicates the problem.

12:40 p.m.

Mr. Rotenberg: The Metro Licensing Commission, when we hear it tomorrow, will indicate the problems or nonproblems with policing this situation. We should hear from them on that.

Mr. MacQuarrie: Am I correct in assuming that cabs licensed by the federal Department of Transport in respect to the airport are under strict controls with respect to rates, that they charge a flat rate depending on zone in the Metropolitan area?

Mr. Conway: Mr. Hadbavny, president of the brokerages association, will respond to that question.

Mr. Hadbavny: Not to my knowledge is there any uniformly--

Mr. MacQuarrie: They are not obliged to charge a flat rate?

Mr. Hadbavny: A flat rate maybe, some of them.

Mr. Bell: A flat rate from the airport. There is no legislation to say what they may charge going back to the airport.

Mr. MacQuarrie: Does not the term of their licence also include flat rates back to the airport?

Mr. Hadbavny: No.

Mr. MacQuarrie: In pickups by DOT-licensed cars, are these made usually by prearranged calls? They are not cruising the street looking for someone going to the airport?

Mr. Hadbavny: They do park on Toronto street waiting for this prearranged situation that you described, but it is not entirely so.

Mr. MacQuarrie: It is not entirely so.

Mr. Rattle: In regard to that question, in some cases they are here on a prearrangement basis. In most cases, through our investigations--and we currently are and have been for some time documenting this--they have been known to solicit. They have been known to park conveniently near our major hotels. They have been known to be parked in front of major buildings here in the downtown core. They have been known to park on side streets, obviously waiting for some type of call or fare. We are documenting this and have been for some time.

Aside from the unfair legislation, the problem has been compounded by these vehicles taking advantage of the law and, as a result, because they are taking advantage of the law, this industry is losing.

Mr. MacQuarrie: But are their operations basically confined to trips to and from the airport?

Mr. Rattle: No. We have documentation where these cars licensed with the TIA permit have been known--it is a fact--to pick up within Metropolitan Toronto and drop off within Metropolitan Toronto, to pick up within Metropolitan Toronto and take fares elsewhere than the airport--other municipalities--and take fares back to the airport.

Mr. Conway: Mr. Chairman, I would simply like to go on the record as saying that although this is relevant, the substance of our objection is not that there is a policing problem. There may well be a policing problem, but that is not the reason the submissions that have been made to you today have been made.

Mr. Chairman: Right. That is the red herring you warned about before.

Mr. Conway: It is an issue of policy and an issue of principle, whether this legislation is going to operate even-handedly or whether it is going to embody an exemption that confers a special advantage on a select few.

Mr. MacQuarrie: I am also thinking of another individual involved in all of this, namely, the passenger. How is he best served in getting to and from the airport? He is a very critical component of the whole thing.

Mr. MacDonald: There are 2,500 taxis to call.

Mr. Chairman: Gentlemen, Mr. Brandt is the last member of the committee who wishes to ask questions. He also has passed me a note, asking us when are we going to break, what are our plans between now and two o'clock when we have the new groups coming, and also what about the Mississauga people that are with us?

What is your choice? We have four groups coming at two o'clock. Do you wish to carry on through? Do you wish to break at this point and ask Mississauga to come back before two o'clock? Do you want to ask Mississauga to make arrangements at some other point? What is your choice? We cannot keep going without some structure.

Mr. Epp: Let's hear from them at two o'clock.

Mr. Brandt: I would agree to that. My questions can be relatively short. If we could go through my questions now, perhaps we could have Mississauga come back at two o'clock and set the afternoon hearings back a little bit.

Mr. Chairman: Fine.

Mr. Brandt: With apologies to the committee, any suggestion to start early is going to cause me some difficulty. I have a meeting at 12:30. I would be squeezed time-wise. I am late for that meeting now, so I cannot very well arrive late and leave early.

Mr. Hennessy: I wonder if it would be possible, if it not a great inconvenience--most of us are going to eat downstairs--if we could come back at 1:45 and take 15 minutes out of our time in order to hear Mississauga. There is no use of hearing one side of the argument. You can never make a proper decision. I would like to hear everybody.

Mr. Chairman: It is either two o'clock or 1:45 p.m. What is your choice?

Mr. Epp: I think if you make it 1:45 p.m., then people will not start until two o'clock, so why do you not suggest two o'clock sharp.

Mr. Hennessy: If you make it two o'clock, you will not start till 2:15.

Mr. Chairman: Mickey, you be here sharp at two.

Mr. Brandt: I will try to keep my questions relatively brief. As a non-Metro member but as someone who has served on a police commission, I have had some experience in licensing. I hope that I can come to this question with a fairly pragmatic viewpoint. I understand your concerns and your problems.

What happens in the case of a Toronto cab with a pickup at the airport going to Mississauga? Do you allow your membership to do pickups in Mississauga as Mississauga is allowed to do in Toronto?

Mr. Rattle: No, definitely not.

Mr. Brandt: So you "dead-head" back, if that is the correct term.

Mr. Rattle: That is right.

Mr. Brandt: In other words, your people do not infringe territorially.

Mr. Rattle: By and large, no. Obviously you are going to have factions that will abuse certain situations. I am not going to sit here and pretend that it does not happen on occasion. Certainly it is not happening to the magnitude that it is happening here in Metropolitan Toronto.

Toronto taxi drivers are subjected to heavy fines if they are caught picking up fares in Mississauga. They are well aware of it. We do not condone it. If these individuals want to do so on their own, then they are subjected to the penalties of the law.

Mr. Brandt: That was mentioned earlier. There is a fine, I believe, of up to \$2,000 for an infringement of jurisdictional rights and so forth.

Both the earlier speaker and you have indicated that they would be subjected to a fine of that level. Have any fines of that level been levied to this point? Has anyone been subjected to that kind of fine or up to that amount?

Mr. Rattle: Not as yet to my knowledge. The licensing commission--

Mr. Brandt: I am asking in the context of the level of policing. We have been discussing the question of how heavily policed this whole area is. If there is any enforcement, I would like to know that. If there has been a very minimal level of enforcement, I would like to know that as well.

Mr. Sapusak: The enforcement in our city has been minimal. The enforcement in Mississauga against our cab drivers has been to the maximum. I recently had the opportunity to attend court hearings for a number of our drivers caught picking up fares in Mississauga. The minimum fines levied on those cab drivers were approximately \$250. I am told through rumours that the Mississauga drivers are being fined approximately \$25. Obviously there is an unfair situation here also.

12:50 p.m.

Mr. Brandt: You are questioning the reciprocity of the arrangement as it stands at the moment then?

Mr. Sapusak: Yes.

Mr. Brandt: Could you indicate to me what happens with respect to the numbers of cabs if this exemption is withdrawn? What would the situation be relative to Toronto cabs having access to the airport if the exemption is withdrawn from Mississauga?

Mr. Conway: There are 69 Toronto cabs, out of slightly over 2,500, that have the federal Transport Canada plates. That is approximately 2.7 per cent of the cabs licensed in Metropolitan Toronto. Also, 149 cabs licensed in Mississauga have the federal plates. Apparently 52 Markham licensed cabs have the federal plates and the balance is distributed among other municipalities, Vaughan, Richmond Hill, Dundas, Pickering, etc.

Mr. Brandt: In addition to removing the exemption, is it not your intention to increase the accessibility of your 10,000 drivers, 2,500 cabs, to the airport?

Mr. Conway: The accessibility of Toronto cabs to pick up at the airport is a matter of federal jurisdiction and determined by them. It is not a matter within provincial jurisdiction.

Mr. Brandt: But I want to know your intent. If and when you get the exemption removed, what is going to be the next move on your part? Is it not to increase the numbers of cabs that would have access to the airport?

Mr. Sapusak: No, sir.

Mr. Rattle: Excuse me. As president of the taxi drivers' association here in Toronto, we recommended that the 231 taxis with the federal permit be allowed to pick up fares in their own municipalities and at Toronto International Airport. We are not contending that we want to move into the airport. We don't want the airport. We don't want to pick up fares in Mississauga. We don't want to pick up fares in Dundas, Fenelon Falls or anywhere else. We just want to be able to pick up fares here in Metropolitan Toronto and leave the business here in Metropolitan Toronto to the drivers of Metropolitan Toronto.

Mr. Brandt: So what happens to a cabby who picks somebody up at the Royal York Hotel and takes him to the airport with a Metro licence? He then heads back?

Mr. Rattle: That is correct, sir.

Mr. Brandt: You are prepared to accept that?

Mr. Rattle: That is correct. Just as we would be more than willing to accept that these vehicles service the airport exclusively, if they so desire, and bring fares into Metropolitan Toronto and get back, as we are doing.

Mr. Brandt: In connection with the Mississauga situation again, where they are allowed to pick up at the airport and deliver a customer to a Metro Toronto destination, the problem you have indicated is they have the right to pick up people and take them back to the airport, but that is being violated because they are parking around corners or doing these other things that you mentioned and are picking up and dropping off within Metro.

One of my colleagues mentioned the difficulty of policing that, and I can appreciate that problem, unless you have somebody sitting in the car or following the car virtually at all times. Is

the aggravation to you that of a Mississauga driver taking somebody back to the airport, or is it more of a problem that he is dropping off within Metro Toronto?

Mr. Rattle: Both. We don't mind--

Mr. Brandt: I am going to ask the same question of the Mississauga people because I see them shaking their heads--

Mr. Rattle: What I am getting at is that we have no objection to these vehicles from any municipality, whether they are servicing the airport, Hamilton or Ottawa, coming into Metropolitan Toronto and dropping off their fares. What we do object to is the fact that these cars are soliciting in the city, plus the fact that under the present act they are allowed to pick up within the city and take people to other municipalities. On occasion, which is documented, they are even picking up Toronto business and dropping people off in Toronto. They are using the law to their advantage and are abusing it.

We object to the fact that we are not able to service the city to the extent we would like to. On top of 231 taxis, we have to deal with another 200 limousines licensed with that Toronto International Airport permit, which is an intrusion of over 400 vehicles into the city. If they like to come into the city and drop off fares, that is fine.

Mr. Gleitman: I would just like to point out, Mr. Chairman, in Mississauga, because of the border situation, that is exactly what we are fighting for. Not one of the 69 Metropolitan cabs with the federal plate is allowed to pick up in Mississauga and take a fare back to the airport.

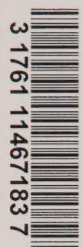
Mr. Conway: Mr. Chairman, just before we conclude, I gave your assistant an additional letter that the brokerages association would like to table as the next exhibit, I believe.

Mr. Chairman: Right. Exhibit 22. I will get it on to the record. It is a letter from the Ministry of Municipal Affairs and Housing, dated October 2, 1981, from Claude F. Bennett to Mr. Zoltan Nemeth. I think it was referred to earlier. Mr. Nemeth is president of Metropolitan Toronto Taxi Drivers' Association. I believe copies have been handed around to the various members.

Thank you very much, gentlemen, for appearing before us and assisting us. We will now break until 2 o'clock sharp when we will hear from the people from Mississauga.

The committee recessed at 12:58 p.m.

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